Public Utilities

FORTNIGHTLY

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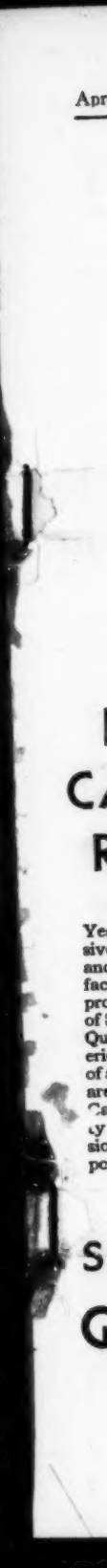
TEXACO LUBRICANTS



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M. M. STOUT, *Assistant Editor*

Public Utilities Fortnightly

VOLUME V — *April 17, 1930* — NUMBER 8

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics including the decisions of the state commissions and courts; now issued in conjunction with Public Utilities Reports, Annotated; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication.

PUBLIC UTILITIES FORTNIGHTLY, published every other Thursday, 75 cents a copy; $15.00 a year.

PUBLIC UTILITIES REPORTS, ANNOTATED, 5 bound volumes with Annual Digest, $32.50 a year.

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Pages with the Editors

FIFTEEN years ago—when public service commissions were few in number and those few were in a much more primitive experimental stage than they are now—the first arrangements were consummated for printing and disseminating the commissions' rulings, opinions and decisions.

* *

THIS step proved to be of great importance to the commissions, to the public utilities and to the whole present system of regulation.

* *

FOR the first time the printed reports of the action of each state commission were made accessible to all the other commissions, to the utilities and to anyone else who wanted them.

* *

OUT of that beginning fifteen years ago has grown the publishing house—Public Utilities Reports, Inc.—the publishers of the now famous volume *Public Utilities Reports. Annotated,* and of this magazine, PUBLIC UTILITIES FORTNIGHTLY.

* *

IN celebration of this fifteenth anniversary, PUBLIC UTILITIES FORTNIGHTLY will issue a special birthday number on June 12th.

* *

THIS anniversary number will be not only enlarged in honor of the event, but will embody special editorial features that will justify the considerably greater distribution which is assured.

* *

FIFTEENTH birthdays come only once in a life-time, and PUBLIC UTILITIES FORTNIGHTLY propose to make this anniversary a truly notable occasion!

* *

THE four leading questions concerning present trends in public utility regulation (see page 466 of this issue), which were answered at some length by SENATOR GEORGE W. NORRIS, Republican of Nebraska, in the March 6th number of PUBLIC UTILITIES FORTNIGHTLY, were also propounded to other members of the U. S. Senate.

* *

THREE of them give their replies in this number of the magazine.

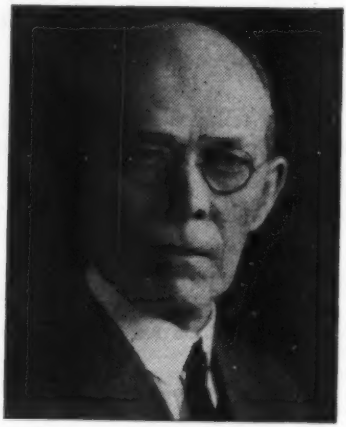
* *

ON pages 468-469 SENATOR CLARENCE C. DILL, Democrat of Washington, states his views on the subject.

* *

SENATOR DILL is one of the younger members of the Senate; he was elected in 1923 when only thirty-nine years of age, after he had served from 1915 to 1919 in the House of Representatives.

(*See page* 468)



COMMISSIONER F. T. SINGLETON

(*See page* 459)

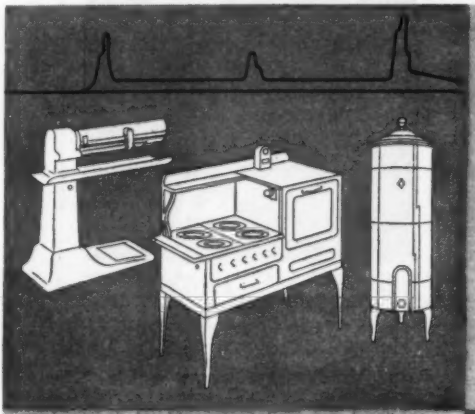
Bachrach

SENATOR C. C. DILL

(*See page* 464)

Do you

GET THE PEAKS AT VALLEY EXPENSE?



THE PEAKS in a modern home may easily be 100 times the lightest load and four or five times greater than the average load. Therefore, the choice of meter determines whether the peak or the valleys, or both, are to be accurately recorded.

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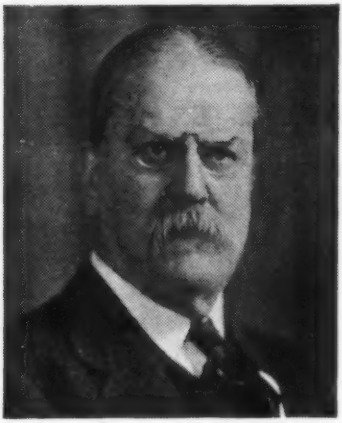
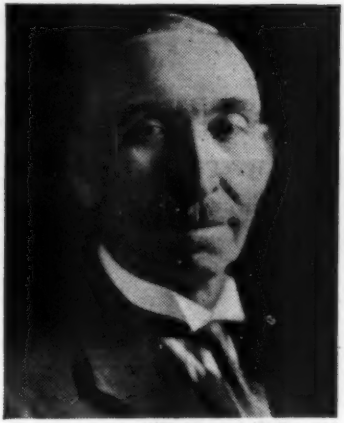


Harris & Ewing

SENATOR HAMILTON F. KEANE
(*See page* 466)



Underwood & Underwood

SENATOR PATRICK SULLIVAN
(*See page* 470)

SENATOR HAMILTON F. KEAN (see pages 466-468), Republican of New Jersey, was elected to his first term in the U. S. Senate in the fall of 1928.

* *

SENATOR PATRICK J. SULLIVAN (whose answers appear on page 470) is the Republican representative in the Upper House from Wyoming.

* *

COMMISSIONER FRANCIS T. SINGLETON, who contributes the leading article "Wanted —a People's Counsel" to this number, has served on the Indiana Public Service Commission since 1924—for two years of that period as its Chairman.

* *

LIKE so many famous Hoosiers, he showed an early apitude for literary work, and upon his graduation from De Pauw University he went into journalism; for twenty years he published the daily and weekly newspaper at Martinsville, his home town.

* *

COMMISSIONER SINGLETON has long been active in public service work, and has held many positions of responsibility and trust in the Republican party and in civic organizations.

* *

HENRY C. SPURR and ELLSWORTH NICHOLS are both of the editorial staff of this magazine.

* *

ARMSTRONG PERRY (see page 487) is a magazine writer who lives in Westport, Conn.; JOHN T. LAMBERT, who conducts the department "As Seen from the Side-Lines" (see page 491), is a newspaper man of Washington, D. C.

PAUL V. BETTERS, whose article "Our Underpaid Commissions" (see page 472) is based upon his own researches, is a graduate of the University of Minnesota, from which he received his B. S. degree in 1928; he received his M. S. degree in 1929 from Syracuse University.

* *

FOR the past two years MR. BETTERS has been engaged in the study of economics at the University of Minnesota, the National Institute of Public Administration of New York and at Syracuse University; he was a staff member of the research group to the Commission which recently investigated the New York Public Service Law, and he is now connected with the Brookings Institution in Washington, D. C.

* *

ANOTHER Federal court has upheld the right of a public utility to seek relief against rates which it considers confiscatory, notwithstanding a state statute permitting a judicial review in the state courts of the question of confiscation. (See page 225 of the "Public Utilities Reports" section.)

* *

AN interesting feature of this case is a ruling that a clause in a franchise contract in which the parties agree that rates should be fixed in a manner provided by state law cannot be interpreted to be an undertaking on the part of the utility, in the nature of an arbitration agreement, to abide by the acts of the State Commissiont nowtihstanding the violation of constitutional rights.

—THE EDITORS.

Over 350,000 investors
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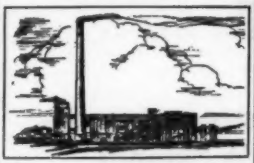
Billion Dollar Organization

A Cities Service Subsidiary—
Public Service Company of Colorado



The Valmont electric generating plant of Public Service Company of Colorado.

PUBLIC SERVICE COMPANY of Colorado is the largest gas and electric company in the state. It operates modern steam and hydro-electric generating stations with installed capacity of 124,000 kilowatts; also numerous sub-stations, and 2,200 miles of transmission and distribution lines. Gas is distributed through 880 miles of mains.

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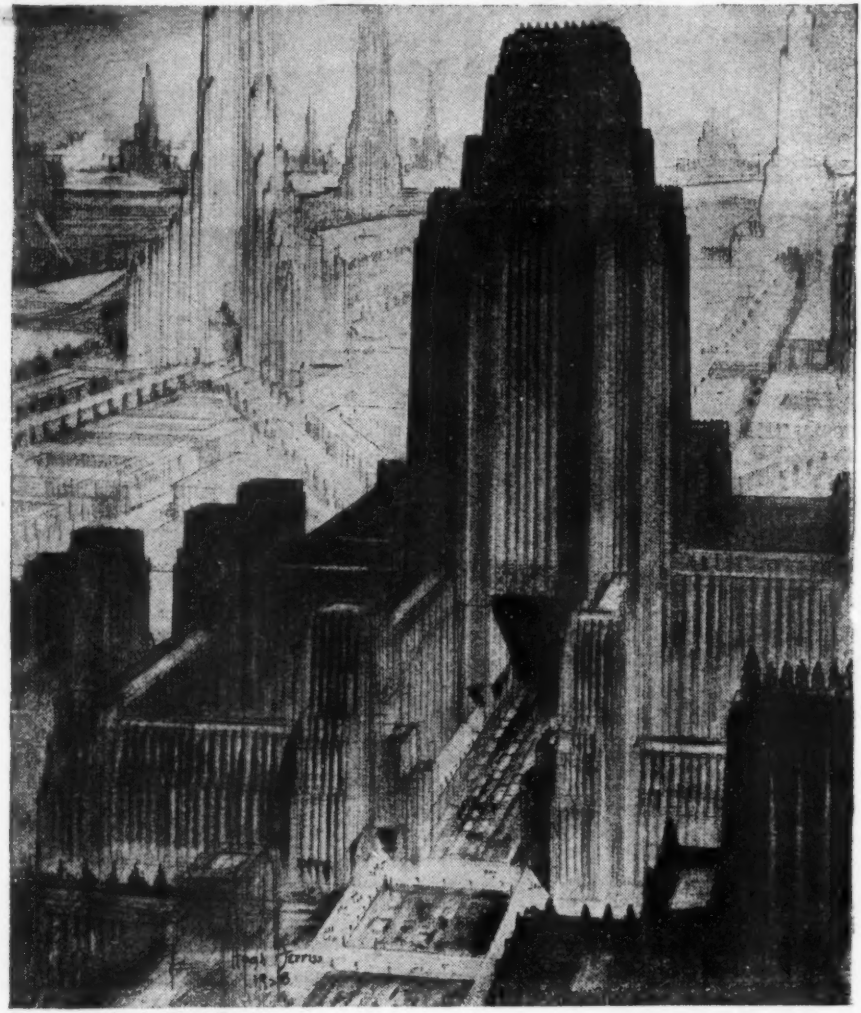
APRIL

ALMANACK

Reminders of Coming Events		*Notable Events and Anniversaries*
17	T^{h}	The Mohawk & Hudson Rd. was incorporated, marking the beginning of the N. Y. Central Lines, 1826. The Public Utilities Commission of R. I. was created, 1912.
18	F	PAUL REVERE made his famous midnight ride—thus demonstrating the urgent need of telephone and radio broadcasting as a public service, 1775.
19	S^{a}	The first sectional canal boats, for use both for water and land passenger transport, left Philadelphia on horse-drawn trucks for Pittsburgh, 1840.
20	S	MARC SEGUIN, inventor of the tubular locomotive first used in France on the St. Etienne & Lyon Railway, was born at Annonay, 1786.
21	M	The act creating the Board of Public Utilities Commissioners was approved by the state legislature of the state of New Jersey, 1911.
22	T^{u}	¶ *Fifty-five days from today the annual convention of the National Electric Light Association will open in San Francisco—on June 16, 1930, by the calendar.*
23	W	The historic hostlery at Charing Cross was opened, marking the beginning of the tavern life that grew up along the English traffic ways, 1661.
24	T^{h}	One of the arguments advanced against street lighting by gas was that it was an interference with the divine plan that ordained darkness at night, 1836.
25	F	Chicago initiated its street car service, consisting of small, coach-like cars hauled over tracks by horses, 1859.
26	S^{a}	Railroad stocks reached their lowest point in six years as the result of the heavy European selling, 1914.
27	S	Foreclosure and sale of the Chicago, Milwaukee & St. Paul Railroad was ordered by JUDGE WILKERSON in the Federal Court at Chicago, 1926.
28	M	The last 10 miles of track connecting the Central Pacific and Union Pacific railroads, completing the first transcontinental lines, were laid in one day, 1869.
29	T^{u}	C. G. PAGE made an experimental trip in his newly-invented electric railway from Washington, D. C., to Bladensburg, Md., 5½ miles away, in 39 minutes; 1857.
30	W	"For attempting to extort funds from ignorant and superstitious people" by exhibiting an early type of telephone, JOSHUA COPPERSMITH was arrested in N. Y., 1869.

"Successfully to accomplish any task it is necessary not only that you should give it the best there is in you, but that you should obtain for it the best there is in those under your guidance."

—GEORGE W. GOETHALS



From a drawing by Hugh Ferriss

Tomorrow's Trafficways

THE growth of American cities and the corresponding development of the essential public utility services are creating new problems in transportation and communication. Will the future city expand skyward in "centers," each center devoted to special Business, Science, or Art interests? Such a center is here visualized in this striking architectural study by Hugh Ferriss.

Public Utilities
FORTNIGHTLY

VOL. V; NO. 8 APRIL 17, 1930

WANTED—a People's Counsel

IN view of the present controversy as to whether or not the Public Service Commissions should play *quasi*-judicial roles, the following recommendations for the creation of the office of "Public Defender," to represent the public in Commission and court hearings, is significant and timely; incidentally, it offers evidence of the general conception of the functions of a Commission as an impartial tribunal rather than as a partisan representative of the ratepayer only. Such a counsel as the author here advocates, has already been appointed, under the title of "People's Counsel" in Maryland and in the District of Columbia.

BY FRANCIS T. SINGLETON
MEMBER OF THE PUBLIC SERVICE COMMISSION OF INDIANA

I BELIEVE that every Public Service Commission should include upon its official staff an attorney who might bear the designation of "Public Defender."

These attorneys should not be partisan. They should be fair to the utilities and to the people alike. They should reflect the law as it is and as intended to be. They should develop all facts, without prejudice to either party, in order that equal and exact justice may be obtained.

The attorney general of Indiana is made by statute the legal counsel for the Public Service Commission of Indiana. He is also counsel for other commissions and for all state officers. By virtue of this designation he is expected to inform any officer or commission what he believes the law to be. His status, therefore, is purely advisory. He is not required to conduct a proceeding before the Commission.

Any statement that the attorney general may make concerning the law, to a private citizen, is purely voluntary. He has no binding legal obligation to tell any private citizen what he believes the law to be.

A few State Utility Commissions

have legal counsels available for consultation during the proceedings of cases that are heard by them, but most of the states are situated similarly to Indiana. The result is that the Commission, in looking after cases filed for its consideration and in seeking to hasten the disposal of the great volume of business presented to it, often fails to ask the attorney general for his opinion. Certainly it does not consult him as frequently as it would wish to do and as frequently as it should do. Because of this condition the suggestion is prompted that the office of Public Defender be created, and that the services of such an officer be made available for all Commission proceedings.

THE public is not familiar with the requirements of laws applicable in the establishment of fair rates for the ratepayers and for fair return for the utilities. The public is not organized to engage in such proceedings. It approaches a rate case with an attitude of mind rather than an array of facts. The attitude of mind is one of resistance to any proposed rate increase, rather than one of reason. This is to be expected under existing conditions. The conditions are briefly thus:

Each municipality or city has an attorney who is engaged to guide the administrative and executive officers of the city in dealing with civic affairs, as distinguished from utility affairs. This attorney is in the general practice of law. The municipality for which he is legal counsel may be a participant in a public utility case once in five or ten years. The attorney has no reason to investigate public utility procedure in rate cases or in purchase and sale cases, or in security cases; his experience with the law is along entirely different lines. He can not be expected to be informed in the minute details of public utility procedure for the establishment of rates or the issuance of securities.

But nevertheless this attorney is the public's representative and he represents the officers who have been chosen in popular election. He is, naturally, unduly responsive to the attitude of the public. As a matter of self-preservation (or self-promotion, as you may choose to call it), he is inclined to represent the view that the public brings to him, rather than to uncover the necessary facts which underlie the merits of the case. This latter task is necessarily irksome to him because he is not experienced in this special line of investigation.

The result is that the public has a loyal representative in its city attorney, but his representation is often inadequate to meet the requirements of the case at bar so far as utility matters are concerned.

COUNTIES, as well as cities and towns, have attorneys similarly employed, similarly surrounded, and similarly inclined. The situation applicable to one of these is applicable to the other.

In considering this problem we should recognize also that a large per cent of the patrons of public utilities own utility securities. This condition is referred to as "public ownership" of public utilities. As a matter of fact it is public ownership, only so far as stock ownership is concerned.

Why the People Need Representatives in Utility Proceedings

"THE general public is not familiar with the law applicable to utility controversies,—is not organized to engage in such proceedings, and approaches a rate case with an attitude of mind rather than an array of facts.

"Corporation counsels for various municipalities are usually engaged in general practice, and frequently have no special knowledge of public utility law participating in such a case once in five or ten years.

"Corporation counsels are frequently supersensitive to popular sentiment which tends to make them take the public point of view without uncovering necessary facts underlying the merits of the case. They are often more loyal than useful to the people.

"The public has discontinued, to a large extent, the practice of attending hearings in rate cases."

Each bond held by a citizen represents a loan made by that citizen to the public utility. The holder of a bond does not receive a dividend in proportion to the earnings of the utility; he receives interest on money he paid for the bond which he holds. His dividend return is assured at a certain per cent. Only those who own common stock receive their dividends according to the amount of money earned and left available for distribution, be that amount large or small. Only the holders of common stock are the owners of the utility property.

These citizens who hold utility stock and who are referred to as "participants in public ownership" of public utilities are usually impressed by their status to favor the claims made by the public utility. They contribute an element to the public opinion of the community. What is frequently referred to as public ownership of public utilities is, therefore, a factor to be reckoned with. It has a very definite tendency to influence the city attorney or the county attorney, and to impress him with the fact that what seems to be well enough should be let alone.

THE law directs that a fair return upon the fair value of the utility property should be attained in every rate case; therefore, the fair value of the property should be found on the basis of evidence and after a thorough investigation to determine. The fair return is less difficult to compute. The determination of fair value carries with it the conclusion as to whether rates shall be high or low, reasonable or unreasonable, fair or unfair. A lawyer who is not experienced in research of values is at a decided disadvantage when he attempts

to discover all the evidences of fair value.

DETERMINATION of fair value during recent years has been very difficult. The World War increased the cost of practically everything. All materials and labor that enter into the construction of public utility property have increased in cost. It goes without saying, therefore, that the fair value of public utility property has increased correspondingly. Likewise, the fair return on the fair value of such property can be obtained only by increases in rates for service. Commissions have had to meet this situation and have been compelled to face the charge made by the public generally that the public utility's application for increase in rates is certain to be granted.

One result of this situation is that the public has discontinued, to a considerable degree, the practice of attending hearings in rate cases. It has concluded that its efforts are useless; it cites the experience of citizens in other communities in support of the conclusion they have reached. The result is that Public Service Commissions in at least fifty per cent of the rate cases conduct investigations without the participation by the ratepayers in resisting applications for increases in rates.

A Public Defender, appearing in each rate case and in each case involving security issues, would serve the purpose that the failure of public participation in such cases now leaves unserved.

THE Public Defender should not be a prosecutor. He should be one who will present the facts and the law in fairness to all parties concerned in the proceeding.

In Indiana the state's attorney in each judicial district of the state courts is required by law to enter an appearance in every case in which divorce is sought. His appearance is not entered for the purpose of prosecuting the one party or the other party to the suit, but is for the purpose of seeing that all the facts disclosed in the case are properly presented to the court. He is an impartial observer, with power to act in support of the statutes and in defense of any infraction that may be attempted as against either the law or the facts.

The Public Defender in public utility cases should be equally impartial. He should see that no relevant fact be omitted from the record; he should see that no relevant section of the utility law applicable to the case at bar be ignored or regarded lightly. He should be as willing to admit pertinent evidence in support of the utility's claim as he would be willing to oppose the admission of evidence not pertinent to the case. He should see that all provisions of the utility statute that provide for the protection of the utility's ratepayers are presented and properly applied in behalf of the ratepayers' rights and protection.

THE Public Defender should be an employee of the Commission, subject to relief from his duties at the Commission's pleasure. His selection should not be dependent upon any authority other than that of the Commission. He should be paid out of the appropriation made for the use of the Commission in conducting its affairs; he should be paid the com-

The People's Counsel Should Not Act as a District Attorney

"A People's Counsel should not be a prosecutor. He should be one who will present the facts and the law in fairness to all parties concerned in the proceeding. . . . He should be diligent that no relevant fact be omitted from the record; he should be equally diligent that no relevant section of the utility law applicable to the case at bar be ignored or regarded lightly. He should be as willing to admit pertinent evidence in support of the utility's claim as he would be willing to oppose the admission of evidence not pertinent to the case."

pensation agreed upon between him and the Commission without right of determination by any other authority.

The Commissioners should be held to strict account for the faithful performance of their duties; failing in this, they should be subjected to discipline by the authority that names them. If they proceed well and wisely in the employment of a Public Defender, they should enjoy the responsibility and be given the credit; if their conduct is culpable, the responsibility should be theirs and the relief provided by statute should be applied to them.

Many times during the preparation of an order the Commissioner in charge needs a word of counsel from a competent attorney who is thoroughly versed in utility law. A Public Defender would be available at all times for such purposes. Such a course would insure greater accuracy in the terms and provisions of Commission orders.

Every Public Service Commission needs a department in which may be quickly found all important decisions in its orders, as well as all decisions by the courts of its state that are applicable to Commission law, and decisions by the Federal courts applicable to public utilities, especially in their relation to the public. The Public Defender should be in a position to create such a department and to keep it up-to-date.

THE practice of a lawyer in public utility matters is a profession peculiar to itself. The best lawyers in general practice are often at sea in public utility problems. They are not informed as to what to seek and they lack the experience necessary to enable them to determine the value of what they find. This is not a reflection upon the lawyer, but it does emphasize the fact that the public utility lawyer is as much an expert as is the specialist in surgery, or in any other profession.

The excess revenues paid by ratepayers of public utilities may easily amount to more than the excess revenues paid by them in taxes upon their property, yet many individuals as

well as business organizations employ research men and lawyers for expert advice on property taxes. The employment of Public Defenders in public utility cases alone would conceivably result in far greater savings to the utility ratepayers than do the activities of the experts who are now giving their sole attention to property taxes.

REGULATION of public utility rates and service by public authority is a substitute for competition. Such regulation is usually entrusted to the Public Service Commissions. The Commissions are expected to secure for the ratepayers adequate service at a reasonable rate. The Commission cannot escape this responsibility;—therefore, it is important that the Commissions be placed in positions to meet this responsibility. The Public Defender is a necessary adjunct to the Commission that would meet this obligation.

Furthermore, the function of a Public Defender would have much to do with the public relations work of the Commission, as it would aid in establishing justice between the public utility on the one side and the ratepaying public on the other side. And justice between these two elements will always lead to better understanding, and relieve some of the pressure upon the Commissions.

THE public relations of the Public Service Commissions are not always of the best, as a matter of fact. Ratepayers do not uniformly approve the action of a regulatory body that increases rates that must be paid by them, although their conclusions often overlook the facts on which increases in rates are based. The result is that to a large extent the Commissions, rather than the rates established, are on trial. Public opinion sometimes responds sympathetically to the attacks made upon Commission findings. The result is that the Commissions are occasionally in disfavor. The Public Defender is needed to aid the Commissions not only in establishing equitable rates but also to point out to the public the reasons for the findings.

The Commissions are often in the position of the candidate for office who was "butted" out of the office he sought. He was an exemplary citizen against whom no charge could be successfully made. But the members of the opposing political party started a campaign which was based upon the remark, "Mr. Blank is all right; he is a good fellow, but—." And there the statement would end. This campaign resulted in arousing suspicion against a meritorious candidate and caused him to lose the popular vote. The story is occasionally applicable to Public Utility Commissioners.

COSTS of utility operation must be be paid out of operating revenues before determining the balance that is available for return upon the fair value of the property. Operating expenses, therefore, should receive the study of a man who has expert knowledge. The Public Defender should be a person qualified to make fair and impartial investigations of this kind. His studies would tend to check public utility operators who are inclined to be more or less extravagant in expenditures made under the guise of operating ex-

penses. The utility ratepayer is entitled to know that these operating expenses are reasonable, inasmuch as he pays them.

The Public Defender should be a man of tested experience, of unquestioned integrity, and of courage. He should be free from obligation to all parties alike, without aspirations for public office, and inspired only to excel in the application of public utility law, to the end that justice be attained for all parties concerned in public utility cases involving rates and security issues.

THE pressing need for a Public Defender in every state in the Union has been brought forcibly to the attention of all ratepayers of public utilities in the decision handed down January 6, 1930, by the Supreme Court of the United States, in the case of United Railways & Electric Company *v.* Maryland Commission.[1] In its decision, the court refers to the basis upon which depreciation should be computed. The decision of the majority of the court held that the rate for reserve for accrued depreciation should not be based upon the cost to install the property, but should be based upon the present value of the property. This is perhaps the hardest blow that the Supreme Court has given the consuming public in many years. I believe that the State Commissions, with the aid and assistance of a Public Defender in each state, should attack this decision and, by persistent and proper effort, compel its reversal. If for no other reason, the employment of Public Defenders by each State Commission would be justified for the purpose of attacking this decision alone.

[1] United R. & Electric Co. *v.* West (1930) P.U.R.1930A, 225.

Handy Phrases from a Politician's Note Book

"THE Public Service Commission's primary duty is to safeguard the interests of the people in the matter of rates and service."

"IN the opinion of some persons regulation is in a very unsatisfactory state whether rates are raised or lowered."

"CITIZENS have the right to make their wishes known to the governor."

"WHEN Congress establishes a policy, no discretion exists in the Secretary of the Interior through direction or indirection to violate that policy."

"LEADERS of the utilities must look upon themselves as economic servants of the public."

"WHEN public supervision breaks down, when private interests are permitted to get entirely out of hand, it is time for an accounting."

Is the Trend from State to Federal Regulation?

A Symposium

THE steady growth of public utility enterprises, the extension of power, gas, and traction companies across state borders, the trend toward interconnections and consolidations, and the rise of the holding company, are raising new problems in regulation. Where the lines of authority should be drawn between the Federal and state regulatory Commissions is a matter that our legislators are now considering. To obtain at first-hand the opinions of some of our important lawmakers, PUBLIC UTILITIES FORTNIGHTLY has asked them the following questions:

(1) Do you believe that the methods of regulating our electric light and power utilities are likely to follow the course of the methods of regulating our railroads?

(2) Do you wish to see the powers of the State Commissions decreased and the powers of the Federal Commissions increased?

(3) What do you believe will be the results of the findings of the Federal Trade Commission so far as the regulation of our utilities is concerned?

(4) Do you believe that our public utilities must eventually come under government ownership and operation?

In the March 6th issue of this magazine was published the reply of Senator George W. Norris; on the following pages are the replies of three other prominent members of the U. S. Senate.

—THE EDITORS

A State's Right to Regulate Its Own Utilities Should Be Preserved

BY HAMILTON F. KEAN
U. S. SENATOR FROM NEW JERSEY

I BELIEVE that the methods of regulating our electric light and power utilities have, to a certain extent at least, already followed the course of the methods of regulating the railroads. They have done so through the mediums of the Public Utilities Commissions of the several states, which authorize the issuance of securities and dictate the rate to be charged, so that the interest on the capital invested shall represent an adequate return to stockholders. And by "adequate return" I mean such a return on the money invested as enables the public utilities companies to obtain more money from the public at par for their securities.

I BELIEVE *that public utilities companies which operate entirely within a single state should be regulated entirely by the State Commission.*

UNDER the Constitution of the United States interstate busi-

ness of electric light and gas lines can be regulated by Congress. This has not yet been done, however. There is no law at the present time which permits or provides for a regulation by Federal authority of all forms of interstate public utilities, although there seems to be a recent trend in that direction.

There is before Congress at the present time a bill to regulate interstate bus lines, for instance. It has not yet been passed, but it may be. There is also a bill before Congress to provide for the regulation of all forms of interstate and foreign communication by wire, wireless, and radio under a commission on communications. It proposes to transfer from the Interstate Commerce Commission to the proposed new commission all interstate telephone and telegraph regulation. This bill has not yet been passed either, but it probably will be.

Do I wish to see the powers of the State Commissions decreased and the powers of the Federal commissions increased? My answer may be epitomized in the Biblical injunction: "Render to Caesar the things that are Caesar's and to God the things that are God's." Those rights which belong to the states under the Constitution I want the states to keep, and the rights which are given to the Federal Government I want the Federal Government to keep.

Where electric light and power lines supply service to several states besides the state in which the main bulk of the properties are located, the Federal Government may yet find it necessary to pass some laws providing for their regulation. What form this legislation would take, I cannot say; whether it will provide for Federal control, or whether it will empower state courts to enforce decisions of the several State Commissions acting jointly, are questions to be determined. Where companies operate entirely within the confines of a single state, however, it is not the business of Congress or the Federal Government to step in.

When considering the question of regulating the holding companies, which in certain cases have grown so large and powerful that it seems possible for them to defeat the purposes of the various commissions, either Federal or State, it must be borne in mind that the values of these companies do not depend upon the amount of stocks or bonds they issue, but upon the physical properties which they actually own. Whether people have one piece of paper or two to represent the value of that property makes no difference in the value of the property itself. The amount a corporation is allowed to earn should be based upon its actual value.

There has been lately in Congress a tendency to criticize the decisions of the Supreme Court of the United States in reference to the values they have fixed on public utilities. But the public should remember that the court was fixing a yardstick at a time when there has been a tremendous increase in cost for material and labor and that the same yardstick applied in the future may show a great decrease in the value of public utilities and, therefore, a decided decrease may show in the dividends that

public utilities are allowed to earn.

Since the World War we have had a tremendous increase in the cost of labor, which has gone in turn into subsequent increases in the cost of copper, of rails, of pipe lines, of desks and office equipment—in fact, into every product that the utilities use. When those costs go down—as it is quite conceivable that they may do within the next five years—then the public may well conclude that the Supreme Court handed down one of the greatest decisions the people have ever received.

Do I believe that our public utilities must eventually come under government ownership and operation? The answer, to my mind, boils itself down to this simple axiomatic statement:

The people want first-class service from the public utilities. The only reason why we have not adopted government ownership is that we could not get the service out of the utilities that we now get out of them under private ownership. Where we have government ownership, operation is not progressive.

My mind reverts, for an example of the difference in efficiency between a government owned and a privately owned utility, to an experience I had with the French government owned telephones. I called up a friend of mine in Paris but finally gave up trying to get him, and walked to his office a mile away. When I entered his office, it was announced to him that a telephone call had been received.

It was my own telephone call—the same call that I had put in more than a half hour previously!

The Dangers of Placing Utilities Within the Jurisdiction of Federal Commissions and Courts

By CLARENCE C. DILL
U. S. SENATOR FROM WASHINGTON

The control of public utilities by state and Federal authority becomes more and more important as the great mergers of these utility companies increase. Unless Congress takes positive action limiting the electric light and power utilities as to the valuations that can be used for rate purposes, the courts will confirm immense watered values in those properties in the future as they are now endeavoring to do with the railroads.

I believe *the power of State Commissions should be retained so far as possible and that the sweeping power given the Interstate Commerce Commission over the railroad rates should not be granted to a communications commission or a power commission that is to control interstate rates of public utilities.*

ONE of the greatest needs of today is to compel public utilities engaged in intrastate business to exhaust their legal remedies in the courts of the state in which they are doing business before the Federal courts will have any jurisdiction to consider their appeals. This will prevent public utility companies engaged in intrastate business from having their cases tried de novo in the Federal courts. It will limit them to constitutional rights only.

UNLESS the Federal courts, and particularly the Supreme Court, of the United States, stop writing economic theories as to the value of franchises and good will as a rate basis for public utilities into every decision on the subject of valuation of the properties, the valuations will be made so high that the only possible relief the people will have will be by constitutional amendment, under which Congress can fix the value of these properties for rate-making purposes or the adoption of government ownership. Without such a constitutional amendment, however, their purchase by the government would be of little benefit to the people because of the inflated values the courts would allow them as the result of condemnation suits.

This saddling of billions and billions of dollars of valuations of public utilities on the backs of the people as a basis for rate making by the Federal courts of this country, is the most dangerous portent to the future of our business and governmental system. When the people wake up to what is going on, there will be a rebellion at the ballot box that may wipe out many of the old safeguards of the Constitution by the calling of a constitutional convention that will write such radical changes into the Constitution that our former standards will be overthrown.

The sooner those in control of great organizations of capital realize these facts, the better it will be for this country and its future. We are educating the rising generation of this country more completely than ever before and they will be prepared to understand these injustices far better than the masses of this generation understand them.

I LOOK upon this question of public utility valuation as of the highest importance both to the Congress and the courts. These valuations affect the daily cost of living of the masses of our people. The decisions of the Federal courts as to the values are determining the cost of street car fares, railroad rates, telephone rates, telegraph charges, electric light and power rates, and through them affecting a great many other costs of the necessities of life to the people as a whole. Unjustified and excessive values by the Federal courts of public utility properties enable these great monopolies and mergers to pick a few extra pennies from the pockets of the poor daily and bring unjustified profits into the coffers of those who exploit them. It is not only unjustified but entirely unnecessary and, therefore, a dangerous thing to continue to do.

C. C. Dill

No Interference With State Commissions So Long as They Serve the People

By PATRICK J. SULLIVAN
U. S. SENATOR FROM WYOMING

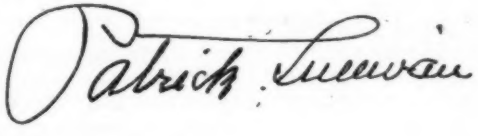
In the state of Wyoming our Public Service Commission is functioning in a very satisfactory manner, and I would not want to see its powers decreased or submerged by Federal Government control. In my opinion, conditions should not be changed there or in any states where such Commissions are properly and adequately serving the interests of the people.

Electric light and power utilities, being organizations charged with a great responsibility to the public as well as to their shareholders, will no doubt continue to be subjected to wise public regulation.

As to intrastate utilities of that character, the agencies set up by the various states seem to have produced satisfactory results and to have brought about an ever-increasing service at a low cost. No doubt further time and experience will develop improvement of the relations between the public utility corporations and the public.

I DO *not believe in government ownership, control, or operation of any public utilities.*

MY observation is that private initiative should be preserved and that, in these organizations of a semi-public character, a combination of private initiative and sound public regulation, dictated by the growth and experience of the business itself, tends to produce the most satisfactory results.



A Unique Experiment for Reducing Motor Traffic and Increasing Street-car Riding

THE Detroit Street Railway is experimenting with a novel idea to improve its patronage and reduce automobile traffic congestion at the same time. The success of the plan depends on whether the company can convince the Detroit motorists that it would be cheaper for them to park their cars at the edge of the congested district and continue down town by street car. To do this the company is permitting motorists who expect to continue their journey into the city by street car or bus to park their cars on the company's grounds for an indefinite period for a nominal fee. Motorists who would continue on foot will have to pay a higher charge for parking. The parked cars are to be protected night and day by attendants.

Are Federal Courts Sapping Regulation?

THE New York *World* points to some figures by Mr. Welch Pogue in Harvard Law Review as evidence that the Federal courts are "sapping" the regulatory power of the states.

Mr. Pogue says that from 1913 to 1926, a period of thirteen years, some 42 cases involving regulation went to the Supreme Court. Of these 27 were rate cases. These 42 cases are referred to by the *World* as a "flood" of court litigation.

Since the *World* thinks that this "flood" of litigation is "sapping" the regulatory power of the states, it must assume that all of these Federal court cases were decided in favor of the utilities and that the courts were always wrong. Really this is too much to expect anyone else to believe except the most dyed-in-the-wool fan.

But let's try to swallow it is we can, and then ask how far these Federal court decisions which are assumed to be always wrong are sapping state regulation.

During the thirteen years in which 42 regulation cases reached the Supreme Court, the Commissions decided, on a conservative estimate, over 100,000 cases, to say nothing of the thousands of informal complaints which they satisfied without expense or delay. You can hardly say that 42 out of over 100,000 is a "flood."

The New York Commission from 1921 to 1928 inclusive entered 11,440 final orders in proceedings before the Commission. During the same period there were only 3 appeals from its decisions to the Federal courts. The story is about the same in other states. The percentage of Federal court cases to the total amount of Commission business is negligible.

Saying that state regulation is being "sapped" because of an occasional appeal to the courts is like asserting that our railroads are no good because travelers get a few cinders or because once in a while a car jumps the tracks.

The utilities have not been rushing into the Federal courts. Quite the contrary. Commission decisions are usually final.

Moreover, utilities are not usually insisting on a return on the full value of their property. The Chairman of the Wisconsin Commission has said that out of the hundreds of rate cases before that Commission, he could count on the fingers of one hand those in which the companies had insisted on a return on the full value of their properties.

Perhaps the ratepayers in New York will find that out if the state orders a valuation of utility property.

Henry C. Spurr

Our Underpaid Commissions

STATE legislatures enact laws that require the Public Service Commissions to perform certain specified regulatory functions—yet they do not always provide funds sufficient for the proper maintenance of those functions. In the following article the author places the responsibility upon the legislatures for the criticism that is directed at those Commissions which are thus financially handicapped.

By PAUL V. BETTERS

ALTHOUGH statutory provisions determine the path and limits of public utility regulation in the state governments, the amount of funds that are made available by the state legislatures to the State Commissions exerts an important influence upon the efficiency of regulation.

Desirable legislation may be placed upon the statute books, stringent control and supervision may be given to the Public Service Commissions by placing all legitimate objects of regulation under its purview, and yet, if necessary funds are not provided for effective administration of the laws, complete regulation is not possible.

WITHIN the last few years state regulatory bodies have been criticised on all sides and charged with ineffective administration. Even the most optimistic students of regulation do not hesitate to admit the many shortcomings in the system. However, can a State Commission be criticised justly when it is so limited in its activities by the niggardliness of the legislature in providing funds that it is unable to function consistently? In this respect should not criticism be directed toward the legislatures rather than toward the Commissions?

In an address before the 38th annual convention of the National Association of Railroad and Utilities Commissioners in 1926, Joseph B. Eastman states:

> " . . . I have no doubt, that the law which creates a public body for the performance of a certain task may be comprehensive, and yet be no better than the paper or parchment upon which it is engrossed if the funds are not supplied which are essential to its effective operation. This fact makes it possible in the domain of government to claim credit for a deed and still leave that deed undone, a possibility which has not always been overlooked . . . it will also be generally conceded, I think, that the problem of determining what funds are reasonably necessary for public activities and of obtaining such funds from a tax-annoyed electorate is a problem of most serious difficulty." [1]

THE experience of many State Commissions has been that adequate appropriations are not always at hand. State budgetary officials in their zeal to cut state expenditures have not realized that often a reduction in expenditures for the Public Service Commissions has meant a re-

[1] Proceedings 36th Convention, Nat. Asso. R. & Utility Comrs. 1926, p. 35.

duction in the amount of regulation which the law specifically states must be maintained. The policy of state legislatures in continuing the same appropriation from year to year has not taken into account the rapid growth of the public utility industry nor the increased powers, duties, and responsibilities which have been given to state regulatory bodies. Governmental economy when applied in this direction has served to limit State Commissions in exercising the complete supervision and control deemed necessary for the public interest.

Expenditures for Commissioners' salaries alone vary from 3.08 per cent of the total amount expended by the Washington Department of Public Works to 78.95 per cent of the total appropriation of the Nevada Public Service Commission. In six states at least 45 per cent of the total budget is consumed for the salaries of the Commissioners and in twenty-five states over one-fifth of all available funds is expended for the same purpose. Thus in several states the balance left for general administration, personnel, and investigations is wholly inadequate. This situation does not arise from the fact that Commissioners' salaries are extremely exorbitant but rather that the total amount appropriated is far too limited commensurate with the responsibilities and activities of the State Commissions. In fact, the New York Public Service Commission is the only Commission in which the salaries for the Commissioners exceed $12,000 each per annum.

ANALYSIS of state budgets and the reports of the State Commissions reveal that paucity of funds occurs quite frequently and is a stumbling block to thorough regulation. In those states where the Commissions operate upon a budget account, limited appropriations result in inadequate funds. On the other hand, in states where expenditures are limited to the amount of fees that are collected by the Commission, collections under the statutes authorizing such fees in many cases do not provide for the needed revenues.

The Texas Railroad Commission in its thirty-sixth annual report states:

> "The duties involved in the exercise of the original jurisdiction of the Railroad Commission are greater than at any time within the history of the Commission. While the Railroad Commission is operating as economically as it is possible to operate a department of this magnitude, it should be said for the benefit of all concerned that our service to the people of Texas is much more limited than it would be if we had at our disposal a more liberal budget and a larger force of trained experts in rate matters. We are discharging the duties incumbent upon us with respect to traffic and transportation matters with all the fidelity possible consistent with the amount of available finances and help."[2]

Similarly, the Corporation Commission of North Carolina in its letter of transmittal mentions that:

> "Each year the business conditions of the state are becoming more complex and the Commission is advertent to the fact that expansion of its efforts and the adoption of the most modern methods are absolutely essential if the department is to fill the place for which it was created. . . . "[3]

[2] 36 Ann. Rep. Tex. R. C. p. 5.
[3] 24 Ann. Rep. North Carolina C. C. 1927–1928, p. 3.

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[3] 24 Ann. Rep. North Carolina C. C. 1927–1928, p. 3.

This same opinion is voiced by the State Commissions in Nevada, Oregon, Alabama, Mississippi, Missouri, Louisiana, Iowa, Colorado, Arizona, and Wyoming. In these states, at least, activities have been curtailed to some degree at the expense of beneficial regulation by reason of lack of finances.

At least four serious conditions in regulative administration have resulted from this policy:

(I) *The Commissions have not only been unable to increase their staffs but in some cases there have been actual decreases in the personnel.*

The Missouri Public Service Commission in order to keep within its appropriation was forced to dispense with some of its needed employees at a time when additional engineers and accountants were needed in order that it might have in its files complete and up to date audits and appraisals of the utilities.[4] The Mississippi Railroad Commission has been without the services of an attorney for duties involving legal questions.[5] In its annual report for 1927, the New York Public Service Commission says:

> "It seems proper and essential at this time to direct your attention to the need for additions to the working forces of the Commission if its regulatory and supervisory duties are to be fully and adequately performed. Particular reference is made to the engineering and accounting divisions where there is constantly on hand a vast amount of absolutely necessary detail work in connection with applications and complaints before the Commission as well as in the course of the usual and routine inspection and other work required to be done. Throughout the state the scope and volume of business transacted by practically all of the utilities under the jurisdiction of the Commission have been very greatly increased since the organization of this Commission in 1921. With this growth in utility operations there has been quite naturally a corresponding increase in the volume of work required to be done by the entire staff of the Commission, but the number of employees of the Commission has not been correspondingly increased. In practically every branch of the Commission's work there should be early additions made to the staff in order to insure the most effective compliance with the provisions of the Public Service Commission Law and other statutes applicable to the Commission."[6]

The Colorado Public Utilities Commission was forced to drop two inspectors and an assistant engineer in 1926 because no salary appropriation was made by the legislature of Colorado for these needed positions.[7] Similarly, the North Dakota Board of Railroad Commissioners was unable to employ three assistant engineers for appraisal purposes in 1928[8] at the expense of desirable investigation in connection with security issues. Other states not infrequently have curtailed their force because of a minimum working appropriation.

(II) *Administration of a division in the Commission or of a particular function or duty has more than often been neglected by State Commissions.*

Occasionally the legislatures charge the Commissions with regulation of a

[4] 15, 16 Missouri P. S. C. R. 1927–1928, p. 11.
[5] Mississippi Budget, 1928–1929.
[6] New York P. S. C. R. 1926, p. 73.
[7] Colorado P. U. C. 1925–1926, p. 37.
[8] North Dakota R. C. 1928, p. 11.

Inadequate Appropriations Mean Inadequate Regulation

"STATE budgetary officials in their zeal to cut state expenditures have not realized that often a reduction in expenditures for the Public Service Commissions has meant a reduction in the amount of regulation which the law specifically states must be maintained. The policy of state legislatures in continuing the same appropriation from year to year has not taken into account the rapid growth of the public utility industry nor the increased powers, duties, and responsibilities which have been given to state regulatory bodies."

specific object and at the same time fail to provide financially for the added regulatory activity. The Michigan legislature in 1928 placed radio supervision under the control of the Michigan Commission but did not make an appropriation for the administration of such regulation. The South Carolina Railroad Commission was not provided with an adequate rate department to investigate rate matters coming before the Commission.[9] Legislative enactments provide $7,500 for motor carrier regulation in Alabama whereas experience shows in that state that the expense of regulation of motor carriers under the provisions of the Alabama Motor Carrier Act cannot, consistent with efficient regulation, be kept below said amount of $7,500.[10] During the years 1922–1928, the inspectional division of the New York Public Service Commission has never been able to meet the demand for inspectional services in that state. Motor carrier inspection in the Iowa Railroad Commission has also been handicapped because of lack of funds.[11] The Colorado Public Utilities Commission referring to rate investigation states:[12]

> "In view of the large amount of regular work handled, which has increased materially from year to year, and with only one employee in the department, it has been seriously handicapped in its efforts to investigate all matters coming to its attention which might prove beneficial to the public."

(III) *Checking of Federal valuations by State Commissions has been handicapped.*

In addition to the primary state work Commissions are actively engaged in checking the valuation reports of the Interstate Commerce Commission which are submitted by the Federal body to the various states for criticism before making them effective in final form. It is felt by the state bodies that this work is of an important nature because of the fact that Federal valuations are often be-

[9] South Carolina R. C. 1928, p. 9-A.
[10] Letter from Commission.
[11] 47 Ann. Rep. Iowa R. C. 1924, p. ix.
[12] 12, 13 Colorado P. U. C. 1925–1926, p. 29.

lieved high. By being unable through lack of funds to check these valuations State Commissions have been unable to protect the interests of the public. The Colorado Commission's experience in this connection has been as follows:[13]

> "The Interstate Commerce Commission has now reached a point in its work in connection with the valuation of railroads where final valuations are being submitted on some of the carriers in Colorado. These values, when finally approved, will be the basis for future rate making. The railways are protesting the values found by the Commission. Because of lack of funds, this Commission has been unable to make any check of the Interstate Commerce Commission's valuations or to check the values claimed by the railroad companies. A small appropriation for this purpose was included in the budget of 1923, and same had the approval of the Governor, but the legislature did not see fit to approve the request. Nevertheless the Commission has taken cognizance of this very important matter, but without any valuations of its own its service can only be of such a general nature as its representatives, the General Solicitor and the Special Valuation Counsel of the National Association of Railroad and Utilities Commissioners in Washington, can render. The Commission believes that in view of the very great importance attached to these valuations, some provision should be made for making a check on the values of the railroads of the state that are being submitted as the final values, so that the interests of the people may be protected in the matter, and funds necessary to carry on this work should be made available."

That this is an important duty as far as the states are concerned is shown by the results of the Iowa Commission in checking Federal valuations. The work of the Commission in that state shows that:[14]

> "The work done in Iowa, therefore, had a far-reaching effect. The records disclose, however, that the carriers have been more successful in obtaining increases of their land valuations in states where there has been no investigation under State Commission direction. . . . "

In California, the Railroad Commission was instrumental in reducing Federal valuations by many millions.[15] If State Commissions are to study Federal valuations funds must be provided for this work.

(IV) *The problem of Federal and state co-operation in matters before the Interstate Commerce Commission has placed an added amount of work upon State Commissions without an apparent increase in state appropriations to the Commissions.*

President J. F. Shaughnessy of the National Association of Railroad and Utilities Commissioners, in his address at the 1927 convention, said:[16]

> "Obviously if co-operative procedure in group wide and district wide cases is to be carried forward successfully, provision must be made to care for this cost. There is also for consideration the increased cost placed upon the State Commissioners who travel and sit in co-operative hearings with the Interstate Commerce Commission at various geographical centers and thereafter the further expenses of traveling to and living at Washington for the pur-

[13] 12, 13 Colorado P. U. C. 1925–1926, p. 21.

[14] Proceedings 38th Convention, Nat. Asso. R. & Utility Comrs. 1926, p. 438.

[15] California R. C. R. 1922, pp. 15, 16.

[16] Proceedings 39th Convention, Nat. Asso. R. & Utility Comrs. 1927, pp. 16, 17.

The Money that Is Available for State Regulation of Utilities

State	Total Commissioners' Salaries	Total Budget for Commission*	% of Total for Commissioners' Salaries
Alabama	9,500	95,991.51	9.89
Arizona	10,500	95,849.00	10.95
Arkansas	10,800	50,700.00	21.3
California	40,000	540,000.00	7.40
Colorado	12,000	51,777.60	23.17
Connecticut	15,000	71,200.00	21.06
Delaware	(None)	(None)	(None)
District of Columbia	20,000	74,118.28	26.98
Florida	15,000	71,150.00	21.08
Georgia	19,400	70,000.00	27.71
Idaho	9,000	39,023.08	23.06
Illinois	49,000	747,008.00	6.55
Indiana	30,000	144,493.00	20.76
Iowa	10,800	98,075.48	11.01
Kansas	22,500	85,300.00	26.37
Kentucky	9,600	20,000.00	48.00
Louisiana	9,000	26,900.00	33.45
Maine	14,000	47,201.39	29.66
Maryland	16,000	137,220.00	11.66
Massachusetts	36,000	274,385.00	13.12
Michigan	35,000	140,050.00	24.99
Minnesota	13,500	196,944.19†	6.85
Mississippi	6,750	19,700.00	34.26
Missouri	27,500	191,660.00	14.34
Montana	12,000	78,089.30	15.36
Nebraska	15,000	76,856.24	19.51
Nevada	11,500	14,565.81	78.95
New Hampshire	14,000	42,400.00	33.01
New Jersey	36,000	261,886.50	13.7
New Mexico	9,000	32,547.08	27.65
New York	120,000	983,082.00	12.20
North Carolina	16,500	70,150.00§	23.52
North Dakota	9,000	63,750.00	14.11
Ohio	18,000	324,750.00	5.54
Oklahoma	12,000	230,550.00	5.2
Oregon	12,000	61,400.00	19.54
Pennsylvania	70,500	565,131.00	12.47
Rhode Island	13,000	24,833.73	52.34
South Carolina	14,100	41,405.00	34.05
South Dakota	13,500	52,980.00	25.48
Tennessee	12,600	58,880.58	21.39
Texas	18,000	114,770.00	15.68
Utah	12,000	25,052.90	47.89
Vermont	8,200	16,000.00	51.25
Virginia	18,200	135,380.00¶	13.44
Washington	6,000	194,377.90	3.086
West Virginia	18,000	98,000.00	18.36
Wisconsin	15,000	327,013.50	4.58
Wyoming	9,000	19,375.00	46.45

* Where amounts actually expended could not be obtained appropriations are used. In cases where the appropriation is for the biennium one-half of the total is used. Data is taken for the latest year upon which information is obtainable.

† Not including grain division.

§ Excluding banking department.

¶ Excluding banking and insurance.

pose of participating in the arguments and the executive conferences preceding the final decision in such cases. This is a service of much value to the Interstate Commerce Commission and while granting that it is valuable to the various State Commissions, many of such Commissions are unable to secure increased appropriations in these days of the application of the budget rule, and the unusual activities of corporate lobbies before some state legislatures make it difficult and in all too many cases impossible to secure adequate appropriations for the purpose of carrying on these highly essential activities. Regulation as such is worthy of its hire and if it is to be carried on under the present method of co-operative procedure the Federal Government may fairly be called upon to participate in the cost thereof."

An attempt was made to have the Federal Government share a portion of this added cost incurred by the State Commissions in co-operative hearings and in obtaining transcripts, but up to 1929 no appropriation has been made for this purpose. Thus at the present time many State Commissions find themselves limited in their co-operative activity with the Interstate Commerce Commission.[17]

"The traffic department has been greatly handicapped in its work of appearing in these interstate cases before the Interstate Commerce Commission on account of insufficient funds. . . .

"The manner and way of proceeding before the Interstate Commerce Commission is prescribed by rules of that body. Briefs must be printed and served upon all parties to the case. Exceptions to the tentative report of the Examiner must be printed and served on all parties to the case. Petitions for modification, or reargument, or rehearing must be printed and served on all parties to the case. Oral argument must be made before the Interstate Commerce Commission in its offices at Washington, D. C. With the large number of cases pending, the funds available are woefully inadequate to parties, each of whom must receive a printed brief. Oral argument cannot be made anywhere except in the offices of the Interstate Commerce Commission at Washington, and in many instances the oral argument is considered the most important part of the case, next to the evidence submitted. Briefs must be based on the official transcript of oral testimony, and in cases brought by other parties affecting North Dakota's interests a copy of the transcript must be purchased at the expense of 12½ cents a page. The average transcript is probably 2,000 pages in length, although many of them run as high as 10,000 pages and more. If the North Dakota Railroad Commission is to appear before the Interstate Commerce Commission in all rate matters of interest to North Dakota, as required by § 591, there should be an annual available fund of at least $15,000 to pay for the necessary supplies, the purchase of transcript, the cost of printing briefs, exceptions to the examiner's proposed report and petitions for traveling expenses incurred in making investigations and studies and appearing before the Interstate Commerce Commission in Washington for oral argument. It is highly desirable to appear in all of the cases because of the fundamental principles of rate making which are involved. A given case may concern rates on commodities of not very much importance to North Dakota, but the principle on which these rates are established may later be used by the Interstate Commerce Commission in prescribing rates on important commodities such as grain or live stock. With the exception of lignite, nearly 95 per cent of all North Dakota's freight traffic is interstate, and the Interstate Commerce Commission has sole jurisdiction over interstate rates. It is, therefore, absolutely necessary that the North Dakota Railroad Commission be given a much larger appropriation for the purpose of complete participation in these interstate cases if North Dakota's rights and interests are to be fully protected, as contemplated by § 591 of North Dakota's laws."

[17] 37, 38 North Dakota R. C. 1928, p. 117.

A TRUE picture of the situation, however, would of necessity state that regulation is not hampered by limited appropriations in all states particularly in those states where the legislatures realize the value of stringent control and thorough regulation. Nevertheless, there are few Commissions in a position to employ permanently the type of expert personnel so urgently required in the engineering and accounting phases of regulation. It has not infrequently happened that

Commissions are forced to make emergency requests for sufficient funds to prosecute investigations.[18] So also at times various utility companies have borne the burden of an investigation where the State Commission was unable to finance such a study.[19]

It may be concluded in view of the experience outlined in this article that unless the State Commissions have sufficient resources at their disposal regulation will suffer. There undoubtedly flows from a policy of thorough state regulation benefits far greater to the public proportionately than the increased tax burden resulting from a liberal appropriation. At the present time state legislatures need have no fear that extravagance is possible in this function of state governance.

[18] Louisiana Budget, 1928–30, p. 24. North Dakota Budget, 1929–31, p. 62. Item 100.
[19] South Carolina, 1928 Report, p. 12 A.

Candle Power—
then and now

At a formal reception given in honor of George Washington in 1790 about two thousand candles were used for illuminating the hall. The cost of this lighting arrangement was $10 an hour.

Today the same amount of illumination by electricity costs 20 cents an hour—or one-fiftieth as much as candlelight.

This is but one of the interesting bits of information revealed about the comparative costs of lighting today and in the pre-electric era, by the National Electric Light Association.

According to these figures, it would have cost our grandfathers $450 to buy enough candles to get the same amount of illumination we now get for $2.20 worth of electricity. Lighting one room with a 100 watt incandescent lamp for 300 hours, (which is about the average burning time of a lamp a year), costs $2.40 or less. Lighting another room of the same size, the same length of time and with the same brightness, using the original lamps made by Thomas A. Edison fifty years ago, would now cost more than $20. At then existing rates for electric service the cost would have been much greater.

Going still farther back in lighting methods and using candles, replacing them constantly as they burn down, and keeping a room of the same size lighted to the same brightness for the same length of time, would cost more than $400.

Only the rich can now afford to burn candles.

SOME UNSUCCESSFUL SCHEMES FOR

Evading Regulation

Legal subterfuges, technicalities, specious arguments —these are but some of the means employed to outsmart the public utility laws. Here are some of them which do not work.

By ELLSWORTH NICHOLS

WHEN the scalawag dodges punishment by means of legal technicalities, we talk of shysters, trickery, and the perversion of justice. When we hatch a scheme to evade a regulation or law we do not like, we compliment ourselves on our cleverness.

Yet we often have seen a reputable citizen who abhors "technicalities" in the abstract, advance all sorts of hair splitting distinctions to support his own lawsuit.

So it is in the field of public utility regulation. Various schemes are constantly being devised to evade the purpose of our public utility laws. Let it be said for the Commissions and courts that the balloons of subterfuge are usually pricked by the needle of common sense.

"Contrary to popular opinion," said Judge Burke of the Colorado Supreme Court, "mere schemes to evade law, once their true character is established, are impotent for the purpose intended. Courts sweep them aside as so much rubbish." [1]

[1] Davis *v.* People ex rel. Public Utilities Commission (1926) 79 Colo. 642, P.U.R. 1926E, 635, 247 Pac. 801.

Motor Busses "For Members Only"

A REPORT comes from New Jersey that a co-operative corporation has been organized to operate motor busses for members only. Members are to pay $1 a year dues and ride for a 5-cent fare. The organizers announce that in this way they can operate without Commission consent and without securing permits from local authorities.

We shall not attempt to prophesy as to the outcome of this particular plan of operation, but we may observe that sidestepping of regulation by Commissions has been a favorite pastime of motor bus and truck operators who find public control irksome. They have uniformly learned, however, that what they thought were loopholes in the law were not such in fact. It may be of interest to consider a few of the schemes that have not worked.

A FEW years ago the Fort Lee Company made a contract with a West Fort Lee Workers' Club to carry workers between West Fort Lee and Edgewater, New Jersey. Each member was to pay 10 cents a

month for dues and 90 cents a week for twelve rides. Although the service was primarily for the members of the club and their families, the membership was entitled to extend service privileges to any person who resided or was employed within the county who should pay the dues and weekly tax. The New Jersey court, in reviewing a decision that the business was subject to regulation, said:

> "That this complaint is comprehended within the definition [relating to carriers] must be obvious, if we apply the equitable consideration that the substance of the thing, and not the mere color or form which it assumes or invokes for the manifest purpose of evading regulation, must be kept conspicuously in view.
>
> "So impressed was the learned vice chancellor with the artificial character of the 'club' device that he declared: 'I am inclined to the belief that the organization of a club is merely for the purpose of defeating the application of the borough ordinance,' thus furnishing, one might say, a sufficiently cogent basis for declaring the complainant a joint adventurer in an enterprise avowedly designed to transgress the law, in which light it cannot be said to possess hands entirely immaculate."[2]

"Associations" for Transporting Property without a License

ANOTHER example of the association scheme of avoiding Commission regulation was furnished in California.

A corporation was formed to transport property for its membership, composed of both active and associate members. Active members had all voting powers and owned the property; associate members had no vote and owned none of the property. A charge of $10 was to be paid for an associate membership. A witness testified, however, that a solicitor who had asked him to sign an application had marked it paid but had informed him that no payments were necessary, nor had any ever been made.

The Commission ruled that the association was operating in violation of law.[3]

LIKEWISE, in Colorado, it was ruled that an automobile freight operator was a common carrier who must have a certificate of convenience and necessity, although he purported to operate under a contract to haul only for the members of an association. It appeared that the members were the shippers of more than 90 per cent of the freight carried in the territory and that the operator had organized the association, which did not actively function. Shipments were accepted between non-members and members, and the operator maintained a storage and transfer station, insured the goods, and charged regular freight rates based on weight and mileage.[4]

THE Pennsylvania Commission ordered the cessation of operation without authority where it appeared that an association had been formed as a subterfuge to conceal or legitimatize the illegal operation of motor vehicle operators who themselves had been restrained from operating. A man named Flaugh had been fined by

[2] Ft. Lee Transp. Co. *v.* Edgewater (1926) 99 N. J. Eq. 850, 133 Atl. 424.

[3] Franchise Motor Freight Asso. *v.* California Shippers (Cal. 1924) P.U.R.1925C, 382.

[4] Davis *v.* People ex rel. Public Utilities Commission (1926) 79 Colo. 642, P.U.R. 1926E, 635, 247 Pac. 801.

the Commission for operating illegally. He then sold his interest in his truck to his brother and drove the truck as his brother's employee. Later he formed what he called a partnership, known as the Merchants' Transportation Company, and drove the truck as an employee of that company. These moves were considered mere subterfuges to avoid regulation.[5]

Leases for Trucking Equipment that Were Not Bona Fide

A leasing scheme was concocted in California. A partnership owning several trucks and trailers made leases with fruit growers. The leases, after reciting that the growers deemed it advisable to conduct and operate their own transportation system, purported to lease specific trucks and trailers upon certain terms and conditions for a definite period. The extent of operation was to be taken care of by the truck owners. Additional trucks and trailers were to be furnished when necessary.

The owners were to receive the reasonable value of the use of the trucks. This value was to depend upon the nature and weight of the properties transported and the distance transported. The fruit growers could end the agreement when they pleased. The owners of the trucks were to assume all liability. Furthermore, they were to drive the trucks themselves when requested by the growers or furnish drivers at their own expense.

Commissioner Shore, after a discussion of these facts, said that the agreement was not a *bona fide* lease of trucking equipment but was in truth a mere contract between the parties for a type of trucking falling within the provisions of the Auto Stage and Truck Transportation Act.[6]

Another phase of the leasing scheme was developed in Maryland. A Mr. Goldsworthy, who owned motor vehicles, entered into a contract with a Mr. Buckell, in which he hired a vehicle to Buckell for two weeks. The contract could be extended from time to time for two weeks more until written notice given by one of the parties. The purpose of this arrangement was transporting such persons as Buckell should desire between two points, one trip each way every working day. Goldsworthy was to carry any and all persons designated by Buckell to a number equal to the capacity of the truck, and Buckell was to pay him at the end of each week $2 for every trip made each way during the week. An account was to be kept of the number of persons so conveyed on each trip when the number was in excess of fourteen, and Buckell was to pay 15 cents per person for each one in excess of that number. Goldsworthy was to furnish the driver.

Judge Boyd pointed out that if Goldsworthy could say "I am not a common carrier; I only carry such persons as Buckell shall desire or such as may be designated by him," and keep up that business for an indefinite time, of hauling from half a dozen to twenty or more persons every trip, without being amenable to the law as a common carrier, it would

[5] Henneous *v.* Flaugh (Pa. 1926) P.U.R. 1927A, 649.

[6] Happe *v.* Redlands Orange Growers Asso. (Cal. 1924) P.U.R.1925B, *69*.

The Purpose of Regulation Is to Insure Equal Rights for All Consumers

"THE purpose of public utility regulation is to further the public good. The purpose of enforcing company regulations is to put each customer on an equal basis. Those who, by evasive schemes, would make exceptions for themselves have usually run up against a stone wall —and we may thank the courts and Commissions for preserving the wall instead of turning it into a rail fence."

be useless to pass such statutes as we have on the subject. The court was unwilling to cripple the law in this way and held that a permit must be obtained from the Commission for this sort of business.[7]

"Joint Operations" of Bus Companies as Subterfuges

IT is now well established that a state has no right to prevent the operation of motor carriers which are doing an interstate business. They cannot, under the Federal Constitution, interfere with interstate commerce. This rule has been the source of several devices for evading regulation of motor carrier service which is not interstate in character.

Here is a complicated scheme which came within the description of "rubbish," mentioned by Judge Burke:

The Interstate Motor Transportation Company was engaged in the business of transporting passengers for hire between Columbus, Ohio, and Charleston, West Virginia. That was all right but some people wanted to ride wholly within the state, and this business would have come under Commission control. This is the way intrastate passengers were metamorphosed into interstate passengers:

A "joint operation" was conducted with a company known as the L. & L. Bus Line, through which passengers carried to Portsmouth, Ohio, by the Interstate Company might be sold tickets by that company entitling them to be transported on the L. & L. Bus Line to Fullerton, Kentucky, a village just across the Ohio river from Portsmouth, Ohio.

The L. & L. Bus Line was not authorized by the Commission to operate anywhere. It was not a part of the Interstate Motor Transit Company and the officials of that company did not own it, nor was the general manager of the Interstate Company able to say what the letters L. & L. stood for. Persons who desired to ride on the Interstate Motor Transit Company busses from Portsmouth to Columbus, Ohio, or to other points in the state, were directed by employees of the Interstate Company to take the L. & L. bus to Fullerton, Kentucky, then after a run of a few hundred feet, or yards at most, on the Kentucky side, passengers were sold tick-

[7] Goldsworthy *v.* Maloy (1922) 141 Md. 674, P.U.R.1923C, 626, 119 Atl. 693.

ets to Columbus, Ohio, or to any other point in Ohio, on the Interstate Company's route. The same L. & L. bus then returned to the Ohio shore and discharged its passengers at the starting point in Portsmouth, Ohio, where they boarded the busses of the Interstate Company for points within the state of Ohio. These facts came out in testimony before the Ohio Commission.

The Commission said that the testimony would admit of but one conclusion, namely, that practically every passenger who boarded the bus at Columbus and other Ohio cities, buying a ticket for Fullerton, Kentucky, was in fact going to Portsmouth, Ohio, and never transferred to the L. & L. line. It was said to be equally apparent that those persons who took the L. & L. bus for a ride just over the Kentucky line, only to be returned to Portsmouth to mount the Interstate Company's busses for Ohio destinations, were not really interstate passengers but intrastate passengers. The so-called "joint operation" was termed a subterfuge, and the Commission said that the Interstate Company, by this maneuver, was merely evading the Ohio statute which required the securing of a certificate of public convenience and necessity in order legally to engage in intrastate motor transportation.[8] Similar disposition has been made of motor carriers in other instances.[9]

[8] Scioto Valley R. & Power Co. *v.* Interstate Motor Transit Co. (Ohio 1927) P.U.R. 1927D, 720.

[9] Public Service Commission *v.* Highway Motor Coach Co. (Pa. 1927) P.U.R.1927D, 309; *Re* Cowell (R. I. 1926) P.U.R.1927B, 378; *Re* Inter-City Coach Co. (R. I. 1927) P.U.R.1927E, 421; *Re* Cowell (R. I. 1926) P.U.R.1927B, 612.

A Nominal Change from Taxi Service to "Automobile Livery"

A MAN by the name of Webb fell into the error of transporting liquor in one of the cars operated under a certificate from the Pennsylvania Commission. For this reason his certificate was not renewed, but this fact did not discourage him in his desire to operate as a motor carrier. He moved his office diagonally across the street, at the main street intersection in the borough of Towanda. He contended that he had changed his business from that of taxi service to that of automobile livery. He advertised as an auto livery and when his cars were not in use they were parked at the side of his office, immediately adjacent to the sidewalk, and the entire establishment was less than 300 feet from the railroad station and clearly visible to persons passing along the street from there.

The Commission concluded that this business was not that of a livery. While Webb said he made an individual bargain with each patron, his rates were uniform for the same distances and on out-of-town trips his rate was based on a charge of so much per mile. He admitted that rates were not mentioned by him until the end of the carriage unless the passenger asked for information beforehand. He further admitted that if someone came to his office and requested to be carried to a particular place and others not accompanying the patron also applied to be taken to the same destination, he would carry all of them up to the capacity of his vehicle and make a uniform charge for the carriage, even though they

were utter strangers. He was ordered to cease this business.[10]

Tapping a Neighbor's Gas Pipes

Bus and truck operators are not the only ones who have attempted to evade Commission regulation or company regulations. Human nature seems to be such that when we want public utility service we want it very much, but when we are receiving it regularly we are not delighted to receive the bills. As a result, many schemes have been evolved for defrauding gas and electric companies; and when service is denied to a customer who does not pay his bills, his neighbors sometimes assist in thwarting attempts by the company to refuse service to him.

Such was the case of George Christ, who had refused to pay bills for service rendered by the Gary Heat, Light & Water Company. When the company shut off his gas service, Apostolos Brothers, who occupied premises next door, permitted Mr. Christ to run a gas pipe from his cellar to the service pipe on their premises. He thought he had the company checkmated, but the company took its troubles to the Commission. There it was decided that it would be unjust discrimination to permit a utility to furnish service directly or indirectly to a consumer who had failed or refused to pay his bill, and that it would likewise be an unjust discrimination to permit individual consumers who had made separate contracts for service to rearrange the service pipes so that two or more could receive gas through one meter. The company, therefore, was authorized and directed to refuse further service to Apostolos Brothers until the unlawful and unauthorized connection was removed.[11]

A Scheme for the Illegal Transfer of Telephone Messages

Telephone companies in Missouri are not required to connect with competing mutual companies. In order to evade this rule, the secretary of a mutual telephone company, which had been formed as a protest against a rate increase of the Johnson County Home Telephone Company, demanded telephone service from the Home Company at his office, but this was refused unless he should agree not to transfer, or permit the transfer of, messages through the switchboard of the mutual company to or from subscribers of the Home Company or its toll connections.

The Commission said that it was clear that the mutual company could not in its own right compel a physical connection, and consequently the Home Company could not be required

[10] Rinebold *v.* Webb (Pa. 1927) P.U.R. 1928A, 604.

[11] Gary Heat, Light & Water Company *v.* Christ (Ind. 1921) P.U.R.1921C, 355.

"Contrary *to popular opinion, mere schemes to evade law, once their true character is established, are impotent for the purpose intended. Courts sweep them aside as so much rubbish.*"

—JUDGE BURKE, COLORADO SUPREME COURT

to furnish a telephone for transferring messages orally to its patrons. It was said that the secretary of the company was seeking to do for the mutual company indirectly what it could not accomplish in its own behalf by requiring service from the utility.[12]

[12] House *v.* Johnson County Home Teleph. Co. (Mo. 1924) P.U.R.1924B, 218; see also Dannatt *v.* Missouri Union Teleph. Co. (Mo. 1924) P.U.R.1924E, 206.

THE purpose of public utility regulation is to further the public good. The purpose of enforcing company regulations is to put each customer on an equal basis. Those who, by evasive schemes, would make exceptions from themselves have usually run up against a stone wall—and we may thank the courts and Commissions for preserving the wall instead of turning it into a rail fence.

The Latest Utility Rulings

ALABAMA COMMISSION: *Alabama Commission v. Southern Natural Gas Co.* This is an important decision on the powers of a State Commission over the intercorporate relations of interstate utilities. (*Reviewed in this issue.*)

COLORADO COMMISSION: *Re Practices of Sightseeing Operations.* Sightseeing motor operators were forbidden to pay more than 20 per cent of the rate charged to passengers as commission to agents for the procurement of the business. Operation of automobiles over ten years old were forbidden. Free side trips were also forbidden.

CONNECTICUT COMMISSION: *Malloy v. City Cab Service, Inc.* The Commission confessed its inability to grant to eleven dissatisfied ex-members of a taxicab association which had secured a joint certificate for the operation of thirty-five cabs by its "members," an individual right to engage in taxi operations in view of their severed relationship with the central organization.

CONNECTICUT COMMISSION: *Re New Hartford Water Co.* Increased water rates were authorized in New Hartford.

CONNECTICUT COMMISSION: *Rev. Borden v. Boyrah Electric Co.* Upon complaint of a number of consumers, service rules and rates of the electric company were reversed. A service application attempting to impose penalties for the breach of service contract subsequent to the date of discontinuance of service was disapproved. The Commission further recommended the purchase of generating equipment operated by an individual who bought back current already sold by him to the utility.

DISTRICT OF COLUMBIA SUPREME COURT: *Re Capitol Traction Co.* Washington car companies were denied a temporary 10-cent fare pending a final hearing of their appeal. (*Reviewed in this Issue.*)

MICHIGAN COMMISSION: *Re New York Central Railroad Co.* The Commission insisted upon its jurisdiction to determine the question of whether or not a railroad should be allowed to discontinue its station at Jerome, Michigan, notwithstanding the fact that the station had been constructed wholly or in part by public subscription.

MISSOURI COMMISSION: *Re Middle States Utilities Co.* A telephone company was given permission to file an amended rate schedule for exchanges in Cainsville, Lawson, Mercer, Wayland, and Gilman City, Missouri.

MISSOURI COMMISSION: *Re Indiana & Michigan Electric Co.* An Indiana corporation upon being domesticated in Michigan was given the right to exercise the power of eminent domain under the Michigan law for a "high-line" between the two states.

NEW YORK COMMISSION: *Re Westchester Street Transportation Co.* Paving laws are no bar to bus substitution by a street railway company. (*Reviewed in this Issue.*)

OHIO SUPREME COURT: *Stark Electric Railroad Co. v. Salisbury Transportation Co.* The Commission order allowing competitive bus service was reversed upon appeal by a protesting carrier. The court said that the fact that the public may have become accustomed to certain bus service, rendered unlawfully, affords no reason for the granting of a certificate by the Commission in the face of expressed conclusion of a majority of the Commission that there was no public necessity or convenience for it.

SOUTH DAKOTA COMMISSION: *Re Hamilton.* In granting a motor operator a certificate for interstate trucking business, the Commission was of the opinion that rates for such service should be uniform with other motor carriers operating over the same route.

"Just a Gas Man"

No. 2: Heroes of the Army of Industry

The quiet, unassuming spirit of the soldier animates every well-disciplined worker in the public service. Here is a true story of a utility employee who found more in his task than just a job.

By ARMSTRONG PERRY

Ed Beasley was just a gas man. Working among the gassers in the oil and gas field south of Oklahoma City, or walking the streets of the city to do his shopping and get a bit of amusement, he probably never was suspected by anyone—least of all by himself—of being of the stuff of which heroes are made.

If anyone had accused him of harboring any such notion, Ed undoubtedly would have guffawed or given his accuser a stiff poke in the solar plexus as a come-back for the kidding.

Probably he never read "Giants in the Earth," that novel, based on facts, which makes the reader uncomfortably conscious of titanic, unseen forces that men must grapple, and must conquer or be conquered.

But Ed grappled with such forces daily, as a matter of routine. All gas men do.

Ed had one fixed idea, namely, that the job of a gas man was to see that the customers had gas. That was why he held a job with the Oklahoma Natural Gas Corporation. Weather didn't count. Hours didn't count. Fatigue didn't count. Danger didn't count, especially in an emergency.

But service did count.

The company draws its gas from many hundreds of wells in more than thirty fields. It comes through five main pipe lines. There are problems enough under any conditions, but when extremely cold weather comes and the gas company's customers need more heat, and the gas consumption jumps up one hundred, two hundred, five hundred per cent, the problem of maintaining pressure throughout all the distribution system is one that demands brains and brawn—plus such fixed ideas that Ed Beasley had. The customers must be served.

During the past winter the north winds one day swept down upon the South, carrying Arctic temperatures with them. In Florida, the palm trees were draped with ice. In open Oklahoma, the frigid gales cut like knives.

The customers had to have gas. More and more gas.

Out in the open, around the wells, and along the lines, men worked day and night while the wind howled and the snow swirled and everyone who could sought shelter. Ed was there.

HOUR after hour they—Ed and his fellows—watched the guages, tended the valves, tried to keep themselves from freezing, doing their work good-naturedly as is the custom of men who team together in a tussle with the giants in the earth.

Near a well in the South Oklahoma City field, Ed Beasley went to a valve to turn on the gas flow. It was bitter weather, but Ed was not fighting merely to hold his job. There were babies, old people, and sick folks to keep warm. Ed was there on the firing line—literally in the trenches—to see that the pressure was kept up, so that these folks back home could have heat.

Carefully Ed started to open the valve. . . .

Just what happened no one knows. Perhaps it was some unusual pressure, or a faulty flange; perhaps it was some unknown element of chance that chose that moment to wreak vengeance on Humanity.

There was no flash, no flame. Where there is fire men have a chance because they know where the danger is, but here there was no warning. There was merely an explosion, the hissing and roaring of escaping gas, then a rush of alarmed men from all parts of the field to meet the situation, whatever it happened to be.

THEY picked up what a moment before had been Ed Beasley a hundred feet from where he made his last effort to see that the customers had gas. He never knew what struck him—that was evident from his bruised and broken body. His life had been snuffed out like a match lit in the teeth of the tempest.

The Capitol Hill Commerce Club adopted a resolution thanking the gas company for its maintenance of good service during the emergency. When customers rise up in a body like that and thank a public service corporation, little more need be said. That company's soldiers of industry have done their bit.

However misty the Good Book may have left details in the minds of us who come up against hard facts now and again, it seems reasonable to suppose that somewhere in the Great Beyond there is a place where Ed Beasley hung up his cap, tipped back in his chair, and remarked to buddies who had gone on before, as they paused in their discussion of the fact that Ed had qualified for the coveted hero medal of the American Gas Association:

"Well, guess I'll call it a day!"

Believe It or Not

(*By our own Ripley*)

BLOWING a steamboat whistle is illegal in La Crosse, Wisconsin.

* * *

THERE are 413 public utility companies operating in Massachusetts.

* * *

THE average American household pays 8 cents a day for electric light and power.

* * *

RADIOPHONES are now being installed for the entertainment of passengers on railroad trains in France.

"I See by the Papers—"

* * * * *Representative Hudson* of Michigan has become the armour bearer at the National Capitol of the forces seeking to protect movie patrons from the evils of the screen. . . . He is reported to have introduced a bill for the establishment of a regulatory commission of nine members—presumably on the quaint theory that the motion picture business is a public utility. . . . Perhaps he seeks to substitute sex appeals for court appeals.

* * * * *Louis A. Cuvillier,* is another alert law-maker who is never caught with his sails flapping while the legislative voyage is in progress. . . . He is said to be the champion bill introducer of the Empire State if not of the Nation. . . . His latest offering, according to the New York *Times,* is designed to preserve the "universal ether" for all time for the use of the people, and he wants an investigating committee appointed—the members to draw no pay. . . . That means that the investigation would cost the people only about $50,000.

* * * * *Frank Couzens,* son of *Senator Couzens,* "the father of municipal ownership," has protested against the boost of the fare on the Detroit Municipal Railways from 6 cents to 8 cents, on the ground that this is a hardship under the present condition of unemployment. . . . This reminds us of the story one of the New England Public Service Commissioners used to tell during the War, when a gas company asked permission to increase its rates on the ground that the price of coal from which the gas was manufactured had doubled. . . . The mayor of the town retorted that this was the very reason why the gas rates should be lowered, as the price of coal was so high that poor people couldn't buy it. . . . Therefore, declared the mayor, the price of gas should be lowered so as to put gas heating within the reach of all.

* * * * *Professor Albert Levitt* of Connecticut is a sure self-made crusader. . . . He started out on a personally conducted campaign to rescue grade crossings from the hands of the infidels; but it is now reported that he will direct his attention to attacking the Connecticut branch of what the Hearst newspapers insist is the "Power Trust." . . . The Professor is certainly a trust-buster of the Old School.

* * * * *Professor Levitt* objects to charges for electricity on the "room area" basis. . . . "Suppose," he says, "that your room is 50 feet long and 30 feet wide. This would give you an area of 1,500 feet." . . . And "suppose," he adds, "that you use only one light in that room and you consumed only 50 kilowatts of electricity; now what is your bill?" he asks. . . . Aw, come, Professor, don't you think 50 feet long and 30 feet wide is a pretty liberal allowance for the living room of a poor man's cottage?

* * * * The *Christian Science Monitor* sagely observes: "What is most needed is a clearly expressed rule as to the methods of ascertaining fair values and reasonable yields." . . . As Amos and Andy would say, "check and double-check." . . . We certainly need that worse than we do a good 5-cent cigar. . . . If anyone can invent a slide-rule on which this problem can be solved with dispatch and certainty he will be entitled to a year's subscription to *Public Utilities Fortnightly.*

* * * * Here is a perfectly dandy idea for improving the street railway service. . . . Says a patron of the Baltimore railways:

> "Now that the United Railways have got their new fare and are promising all sorts of improvements in service, there is one suggestion I intend to make to them. It is that they make a really monumental effort to keep coughers off the cars. I have observed that persons suffering from chronic irritations of the lungs, larynx, esophagus, pharynx, tonsils, and palate, flock as naturally to the trolleys as to dispensaries. There they sit and cough. Night after night I go home surrounded by wheezing, hemming, choking, whooping, hawing."

. . . For the peace of mind of this patron it is to be hoped that the United Railways will soon be able to advertise "not a cough in a carload."

* * * * To *Frank McKinnon* is credited the remark, "I'd pay 10 cents for good street railway service; the only question is whether we'll get it." . . . No sir, this is not a murmur of a street railway patron from Baltimore, a privately owned electric railway town; it comes from Detroit, where the city owns and operates its own railways. . . . If a municipally owned street railway cannot satisfy its patrons, who can? . . . The answer is that not until Gabriel blows his justly famous horn will the patrons of street railways be wholly satisfied with street railway service—and then it will be only because rails have given way to wings.

* * * * *Congressman Somers* of New York has introduced a bill in the House of Representatives to limit the jurisdiction of Federal courts in confiscation cases; he would have the district court refer valuation questions of fact to the higher state courts having trial jurisdiction in the state where the properties are located. . . . "This," he complacently observes, "will substitute a supreme court of justice for the usual appointed Federal Master and will guarantee public confidence in the findings." . . . Dear me, is not the Congressman just a wee bit optimistic about "guaranteeing public confidence?" . . . After all, what the ratepayers are interested in is getting what they want. . . . They would not object to Federal court decisions if the decisions were in their favor; contrariwise, if the state courts happen to decide against them we are not so sure that the ratepayers would be willing to sign a "guarantee of confidence" on the dotted line.

* * * * According to newspaper reports, the Parliament of the Community Councils of New York city has resolved that the Public Service Commission Law should be amended so as to provide for the removal of any Commissioner afflicted with corporation bias. . . . The trouble with that resolution is that it does not go far enough; it would at once leave the question of what constitues "corporation bias" open to the construction of the courts—and that would probably be the last thing that the Parliament of Community Councils would want to do. . . . The law should be fortified with a legislative definition of what constitutes bias in favor of public utility companies; it would be interesting as well as instructive to have the ideas of the Parliament of the Community Councils on that question. . . . As "bias against the corporations" is not to be made a ground for removal of Commissioners there will, of course, be no need of a definition of *that*.

* * * * A disgruntled street-car rider utters this protest on the 10-cent street railway fare in Baltimore:

> "Certainly it is an outrage to ask Baltimoreans to pay 10 cents a ride for the sort of service they are getting. Baltimore street cars are a study in slow motion."

. . . We don't know a thing about the street railway service conditions in Baltimore, but we do know that there is some connection between the street railway fare and the service you get for it. . . . Whether poor service is due to inadequate revenues or inadequate revenues are due to poor service is often hard to tell. . . . It is another version of the ancient query, "which came first, the chicken or the egg?" . . . Getting into elevated railway cars in New York city, a stranger at once notices the shabby condition of the equipment; he may be inclined to say, "what a disgrace this is for a rich city like New York!" . . . But maybe no company could do any better on a 5-cent fare.

* * * * It is reported that Senator *George W. Norris* contended in the recent debate in the Senate over the chief justiceship that if the consolidations of corporations is to go on much longer "there will not be a man in the country from farming to manufacturing who will not be working for somebody else, taking commands from the man who sits at the head of monopoly with his feet on a mahogany table giving orders to the peasants and the hired men who work in the factories and even those who work in their professional offices." . . . We would be willing to wager a maraschino cherry, as one Senator expressed it, that Senator *Norris* would like to be the man with his feet on the desk—provided, of course, that the mahogany were in an office building located on government property.

* * * * The Baltimore *Sun* thinks the trouble with the view that the Public Service Commission ought to hold the scales even in disputes between public utilities and their customers, is that this gives the companies the edge on legal talent and expert witnesses. . . . "This," says the *Sun*, "causes such controversies to take on the appearance of a combat between *David* and *Goliath*." . . . But do you remember what happened to *Goliath*? . . . The important thing is the outcome of the combat, and not the relative size and appearance of the warriors. . . . The cold fact is that *Goliath*, in spite of his supposed advantage in physique, has been more often slain than *David* in championship tilts before the Commissions.

As Seen from the Side-lines

A NEW design of public utility regulation has been hatched for that latest adventurer into the field of common carriers—the motor bus.

* *

THE process of legislation may be said to have worked one-fourth of its way through Congress. It has passed the House. Time, delay, debate, and such other negations as can come under the term "mature deliberation" have contributed to make the Senate the other three-fourths of the legislative machine.

* *

ANOTHER year may have rolled 'round, long skirts may be back, or the coal-black hair of your Southern statesman turned to thin wisps of gray, before the new device of regulation has gotten itself definitely on to the statute books. But the prediction can be made with some show of self-sufficient confidence that it will ultimately get there.

* *

THE ponderous bus which meanders its way along the paved roadways of the Nation can be looked upon as one of God's blessings or as a distressing danger to the peace and good will of the public. You can take it either way from the debates which thus far have fallen upon the attentive ear of the House.

* *

IT carries millions of passengers annually, yet it is a nuisance and a menace. It endangers life on the highways; it is largely responsible for the jostles you get in your limousine from the cupped and smashed pavings. It is irresponsible. It carries no insurance or other guarantees of compensation for him who is wounded, maimed, or killed by it. It pretends no regular service. It is a cutthroat, enticing away the profits that should be derived by the orderly, efficient, and adequate service of the railroads and railways. It sets up a service of its own and runs away leaving its passengers or prospective patrons standing in the rain and sleet and snow if its income is for the moment insufficient. It runs across a state line with a semblance of engaging in interstate commerce for the surreptitious purpose of escaping state regulation. It guarantees neither a steady price nor a regular service.

* *

IT is, in short, the Ishmael of transportation.

* *

BUT, on the other hand:

* *

IT ventures into the isolated hamlets and villages and crossroads, providing carriage for the millions of people, notably the poor ones, who can afford no auto of their own and are left with inattention by the powerful railroads. It is a boon to the footsore and weary. It carts the children to school and the mother to market through Winter storms, over seemingly impassable roadways. It meets the poor man's purse. It is the natural foe of railroad monopoly. By its competition, it keeps the price of transportation down to the level of the common pocket-book. It is operated by your friend and neighbor, in whom you have reliance, who has a civic pride and is not sending his profits to Wall Street. It picks up the workman at his door and deposits him at his place of work. It saves the suburbanite the danger of driving his own car to the metropolis over the wet and slippery macadam.

* *

IT is a friend in need.

* *

APART from those pros and cons, the House seemed to have been impressed by the fact that the motor bus in interstate commerce is unregulated. Accordingly, the Parker bill, as it went

through that branch, established a new system of regulation for the relatively new arm of commercial transportation.

* *

THE new regulation vests the ultimate power of regulation in the Interstate Commerce Commission while proposing a new machinery to maintain state's rights. The bus is to be regulated in the primary instance by a board consisting of one member of the Utility Commission from each state in which the bus operates.

* *

A certificate of necessity and convenience is to be issued to the bus after a public application for it, except that the busses which have operated constantly over a route since January 1st will be presumed to have established the necessity.

* *

BUSSES which can accommodate more than six passengers and which operate except for special occasions, such as a school route or a Sunday excursion tour, will come under the new plan of regulation.

* *

THE reasonable fare and the reasonable schedules for service will be mandated by the interstate board, subject always to ultimate decision by the Interstate Commerce Commission.

* *

BONDS in guarantee of adequate service and of compensation for damages inflicted can be required. Safety of operation, qualifications of employees, and comfort of passengers can be ordained by regulations. Secret rebates to favored clients are tabooed.

* *

CONSOLIDATIONS and mergers of the bus lines are permissible, under the secondary regulations which will be formulated by the governing bodies. Against that blanket authority formidable protest was made. A railroad would take over a bus line, it was said, snap the certificate of authority in the face of the public, and prohibit any competitor from entering the field.

"BUT," replied the optimistic ones, "the rates and fares can be regulated." Which drew from Mr. Huddleston of Alabama a comment to the effect that regulation doesn't amount to a damn anyway, and thus disclosed the psychology of his entire opposition to the legislation.

* *

THE Parker bill is too long, too complicated, and too important to be discussed in the length of this column. It is an interesting study in the theory of regulation for those who are interested in that important subject. They should write to the House Committee on Interstate and Foreign Commerce and get a copy of it, and the accompanying report, No. 783. The bill's number is H. R. 10288.

* *

FOR the immediate purpose of distributing information, it can be said that the bill will become a law substantially in its present form.

John T. Lambert

"SUCH things as railroads . . . are impossibilities and rank infidelity. There is nothing in the Word of God about them. If God had designed that His intelligent creatures should travel at the frightful speed of 15 miles an hour by steam, He would have foretold it through His holy prophets. It is a device of Satan to lead immortal souls down to Hell."

—Reply of a school board in Ohio to a request for permission to use the school house for a discussion about the use of steam power on railroads, 1828.

What Others Think

Why 49 Varieties of Bus Regulation?

"WHERE is state regulation going?" asks R. E. Plimpton, associate editor of *Bus Transportation*. He wants to know whether regulation is headed towards a greater measure of uniformity or not. He is thinking particularly of bus regulation, of which he says there are 49 varieties.

Regulation of bus transportation up to the present time centers about the granting of the right to operate, uniform accounting, and safety requirements. The laws of most of the states give the Commissions power to fix reasonable and nonconfiscatory rates, but there has as yet been little or no rate making based on a thorough study of the cost of service, possible revenue, or other essential factors. Says Mr. Plimpton:

> "The 49 brands of regulation discussed in this article, differing as they do in many important details, may seem a far cry from a desirable degree of uniformity. But as a matter of fact their application, in adjoining states at least, is tending more and more toward standardization. The prime reason for this is undoubtedly the economic development of the industry, particularly the merging of local or intrastate with through or interstate services on the same highways. Almost equally important is the growth of a co-operative spirit among the various branches of the state government. This may be required by law, but often is informal, and dictated by a real desire to serve the public. Legally responsible as it may be, not only to the regulatory body, but also to highway, motor vehicle, and perhaps other state departments, the bus industry will undoubtedly be benefited by efforts of public officials to loosen the shackles of non-uniform regulation, as well as those due to obsolete laws and regulations."

WHY FORTY-NINE VARIETIES OF STATE REGULATION? By R. E. Plimpton. *Bus Transportation*, February, 1930.

What Is "Due Compensation" for Private Property Seized for Public Use?

SHOULD the states have the right to take anybody's house and pay what they please for it—or pay nothing at all if they choose?

Your answer may depend partly on whether you own a house and lot and what you think of the amendment to the Federal Constitution which is supposed to cover that situation, and the Supreme Court's interpretation of that amendment. In the last analysis the Supreme Court has made it impossible for the states to take away anybody's property without due compensation. This interpretation has caused plenty of thunder and lightning.

In an article in the *Baltimore Sun*, Dexter M. Keezer gives an interesting account of how the amendment forbidding the states to take away private property came to be put into the Constitution. He says:

> "Following the war between the states, amendments to the Federal Constitution were drafted to prevent newly freed slaves from being deprived of their rights by the states. In this connection, Congressman John A. Bingham, of Ohio, a successful railroad lawyer, saw a chance to insert in the Federal Constitution a provision that would also give corporations the right to appeal to the Federal Government for protection against state action adverse to their interests.
>
> "Bingham is said to have explained later that he wanted to do this as a result of reading the decision of Chief Justice Marshall in the case of Barron *v.* the Mayor and City Council of Baltimore. In that

case it was claimed that the city of Baltimore had taken private property for public purposes without making a reasonable payment for it. The case was appealed to the United States Supreme Court, but Chief Justice Marshall held that there was nothing in the Federal Constitution to prevent it.

"With this in mind Bingham was largely responsible for having inserted in the Fourteenth Amendment to the Federal Constitution, otherwise concerned largely with political adjustments following the war between the states, the provision that 'no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law.' . . .

"Thus, in the words of Charles and Mary Beard in their 'Rise of American Civilization,' 'by a few words skillfully chosen every act of every state and local government which touched adversely the rights of persons and property was made subject to review and liable to annulment by the Supreme Court at Washington, appointed by the President and Senate for life, and far removed from local feelings and prejudices.'"

MR. Keezer then points out that the Supreme Court at first held that rate making is strictly a legislative function and that it then reversed itself on this point, holding that although rate making is a legislative power it can not be carried so far as to take private property without due compensation.

It is true that the Supreme Court reversed itself upon this point. If it had not done so the states could fix utility rates as low as they pleased, providing, of course, there were no provisions in the state Constitutions forbidding the seizure of private property without due compensation. All the troublesome questions of valuation would be eliminated if the door to confiscation stood open. It would not even be necessary to examine the books of the corporations to see what their operating expenses were. The legislatures could just decide for themselves what they thought a reasonable rate should be, with no one to say nay. The legislature would not have to worry over any question of whether the rate paid the company or not. If the legislature wished to confiscate the plant itself as well as the income, it could do so. It is not likely that it would go as far as this; but most persons feel a little safer with a law forbidding them to do so. There is not the slightest doubt but that the legislatures, especially in a time of anti-utility hysteria, would fix rates far below the compensatory point. What the legislatures could do to the utility's house they could do to anybody's house. Most persons would not like to be despoiled of their own property. Why insist on the right to take that of a neighbor? If the states have been deprived of the right of taking property without just compensation by a piece of judicial legislation, isn't that a pretty comfortable piece of legislation?

Your own house may not be threatened now but there is no telling how soon it would be if there were no constitutions and no courts to interpret them.

—D. L.

A Break in the New York Water-Power Deadlock

ALL signs indicate that the New York water-power program is headed either into the safe harbor of legislative solution or straight for the rocks of political annihilation. The recent passage by a unanimous vote at Albany of Senator Thayer's bill creating a Commission of five members to be appointed by Governor Roosevelt to investigate his plan for state development of the power sites of the St. Lawrence river is the first definite step yet taken towards the termination of the 10-year *impasse* which has existed between the Democratic and Republican forces of New York state.

THE trouble started back in 1920 when a comprehensive development of the state-owned hydroelectric sites on the St. Lawrence was first suggested. Governor Smith objected to any proposals for private development that would, as he stated, "have the effect of alienating forever from the people of New York these great natural resources." The Governor contended that the plan of leasing the operation and development rights for long terms to private corporations would have this effect and consistently vetoed and thwarted any effort at development by private enterprise. Although beaten in 1920, Governor Smith was returned to office in 1922 where he remained until 1928.

Just how Governor Smith thought these sites should be developed was not made entirely clear until the latter part of 1924 when he advocated his "Power Authority for the State of New York," an instrumentality of the government by which the state would build and operate the water power plants and sell power to private companies for distribution. The Power Authority would finance itself by selling bonds in the market.

Governor Smith further clarified his position during his 1928 campaign for the Presidency when he said that he stood for government development and private distribution. During his executive career, however, his proposals were in turn rebuffed by a legislature controlled by the Republicans.

His position received the endorsement of many noted industrial leaders and economists including Mr. Owen D. Young. On the other hand, it was also attacked very vigorously by Mr. Ogden Mills in 1927, then Congressman from New York and present Assistant Secretary of the United States Treasury.

This protracted deadlock has resulted in a corresponding tightening of party lines, so that during the 1928 campaign, the Republican gubernatorial candidate, Mr. Albert Ottinger, was very outspoken in favor of a long-term lease for private development, while his opponent, the now Governor Franklin D. Roosevelt, was equally insistent upon development by the state.

WHEN the Democrats won another victory in the race for governor and Republicans retained control of the legislature, it was generally presumed that the water-power issue which had hung fire since 1920 would continue to hang for another two years. In fact, both Democratic and Republican parties had little hope for any solution until either the Republicans should capture the Governor's share or the Democrats should succeed in gaining control of the legislature and, in view of the persistent habit of New York voters in ticket splitting, there seemed little likelihood of either event coming to pass.

Governor Roosevelt in office has probably gone further than his predecessor in his program for government development. While he has fought tirelessly for state development of the St. Lawrence he has not drawn the line at governmental distribution as clearly as Governor Smith did. He has encouraged municipal operation of electric distribution plants, and the recent report of the minority of the Commission on the Revision of the Public Service Commission Law, in recommending the state policy of encouragement to municipal utility operations, is said by Mr. Frank P. Walsh, appointee of the Governor to the Commission, to be a reflection of the Governor's attitude on this question.

The break came rather suddenly during January, 1930, when the Republican forces, seeking to eliminate the water-power issue from the forthcoming gubernatorial campaign, proposed to authorize the appointment of a commission by the Governor to investigate the feasibility of the Governor's plan for developing the hydroelectric resources of the St. Lawrence. To the surprise of many, Governor Roosevelt accepted the challenge and the bill was passed accordingly.

Both the Republicans and Democrats have stated, according to the New

York *Tribune*, that the bill will eliminate the water power issue from the autumn campaign. Governor Roosevelt's avowed purpose in signing the writ was, as he said himself, "to take the St. Lawrence power question out of politics."

SPEAKING on the bill in the New York Senate, Senator Knight, spokesman for the State G. O. P., stated:

> "This is not an abandonment of the Republican party's position on water power. The bill says the water-power resources must forever remain inalienable in the people and that has been the position of my party for years. The people of the state must not be confused by statements to the contrary. Wide powers are being conferred upon the Commission but action on any plan the Commission may suggest rests with the legislature."

While the bill directs the new commission to investigate first the Governor's plan, it also allows a study of any alternate plan or plans. The commission is to report to the next legislature.

Just what the outcome of the new step will be is highly problematical. With the appointive power in the Governor it is quite certain that the commission will be composed of men who, to say the least, would not be prejudiced against either the Governor's plans or governmental operation. As suggested by Senator Knight, however, the commission is to act purely in an advisory capacity.

The New York *Times* has expressed fear that this might be just a political manœuver by the Republican to sidetrack the water-power issue until after the 1930 campaign, and if that is true, it is likely that the Republican legislature will toss the commission report, figuratively speaking, in the legislative waste-basket. Republican leaders deny this.

But there is evidence that the Republican move may be based on changes of heart within its own ranks. The New York *World* has pointed to the resignation of Edmund Machold from the leadership of the Empire State G. O. P. as an indication that Republican leaders are not satisfied with the traditional policy of the party on the water-power issue. If this proves to be true, the report of the commission may receive serious consideration from a Republican legislature, even though it recommends state development which (according to the *World*), is quite likely.

SUMMING up the entire situation, we can expect two alternatives; (1), either the legislature will pay strict attention to the report of the commission, in which event some definite agreement for development of the St. Lawrence may be reached and enacted at the next session, possibly embracing some or all of Governor Smith's original proposals, or; (2), the report will be disregarded, in which event the people of the state will know definitely that nothing will ever be done until either the executive chair or the legislature changes its present political complexion.

In either event, all agree that the period of watchful waiting is over. Either something will be done or nothing can be done under the present political set up. Should the second alternative be true, the issue will be placed squarely up to the people to decide for themselves which policy they wish to pursue.

Meanwhile the waters of the St. Lawrence flow on unmolested.

The Authority of Congress to Clarify Valuation Rules

THE letter of the Interstate Commerce Commission to Senator James Couzens, Chairman of the Senate Committee on Interstate Commerce, together with the dissenting memorandum of Commissioner Woodlock, illustrates the points over which two opposing schools of regulation sharply

differ. One of these schools is of the opinion that valuation rules can be clarified by Congress; the other believes that this is beyond the power of the legislative branch of the government.

In its letter to Chairman Couzens, the majority of the Commission said:

> "We entertain little doubt that Congress has practically a free hand in fixing the conditions under which future investments shall be made in interstate railroad properties. Whatever conditions were fixed, investments would be made in the light of and subject to such conditions. The question, so far as Congress is concerned, would not be one of constitutional power but rather one of expediency and wisdom. In the case of existing property, however, acquired through past investments, the situation is otherwise, for with respect to such property the constitutional limitations upon public regulation are unaffected by any prior stipulation of conditions.
>
> "But even as to existing railroad properties, we believe that it is not only appropriate but highly desirable that Congress should, by definite direction to this Commission, indicate its views as to how we should exercise reasonable judgment in arriving at both 'fair value' and 'fair return.' Fundamentally, as has been shown above, this is not a question of technical law but a question of what is 'just and right.' There is, therefore, every reason for a definite declaration of public policy upon this matter in the first instance from the fountainhead of legislative power rather than from a mere agent of Congress, which is what this Commission is. The results of such a declaration would, of course, be subject to review by the Supreme Court, if it were contended in any instance that they transgressed constitutional limitations; but in that event we feel sure that a broad declaration of public policy from the legislative branch of the government, particularly if accompanied by a clear statement of the reasons therefor, would be of great help to the Supreme Court. It could hardly be otherwise. One of the great difficulties, indeed, which the courts have in the past encountered in dealing with this subject has been that the legislative bodies, Federal and state, have never undertaken to make such a declaration. It would in effect amount to a legislative determination of the weight to be given the various elements of value, a matter which, as we have seen, the Supreme Court has thus far carefully refrained from foreclosing."

On the other hand, Commissioner Woodlock, in a separate statement, said:

> "I am in general disagreement with the views of my colleagues as expressed in the letter addressed to you by the Chairman of the Legislative Committee and deem it desirable to state very briefly the ground of this disagreement.
>
> "I do not believe that the 'O'Fallon rule' or the 'reasonable investment' rule—or any other rule of similar nature—of determining value for rate-making purposes can by any form of legislation be made the law of the land. Value for rate-making purposes is a fact to be found by a judicial process and is not a relation to be fixed by a process of legislation. The law of the land which governs valuation of property used in public service rests upon a constitutional and not upon a legislative foundation, and it can not be changed by statute. Nor can it be affected by declarations of policy by the legislature. That its application under provisions of § 15a entails some administrative difficulties is probably true, but these difficulties, I venture to think, are by no means so great as they may appear to many people and are certainly not insurmountable. But be they great or small the situation is the same so far as the law is concerned."

Letter of the Interstate Commerce Commission to Senator James Couzens. January 20, 1930.

What Are Rate Comparisons Worth in Government Ownership Arguments?

The water power controversy in New York ranges over a wide front. Next to the St. Lawrence *impasse*, the hydroelectric development on both sides of Niagara Falls continues to complicate an already highly controversial question because of the fact that followers of both camps in the eternal debate about government ownership of public utilities continue to draw conflicting conclusions from comparisons of respective rates for electricity charged by the government systems in Ontario and the privately owned plants

just across the Niagara river in Western New York.

These discussions are of interest, not only to New Yorkers but to the entire Nation, inasmuch as they involve general economic principles that are by no means peculiar to the Empire State. Speaking of the new state commission to investigate St. Lawrence power development, already mentioned in these pages, Governor Roosevelt was recently quoted by the press as stating:

> "I hope that this is the first step in obtaining a definite reduction of rates, especially for the householders of this state. The monthly electric light bill in the average home is becoming a more and more important item in the household expenses and it is incumbent on all of us to see that the rates are kept down to the lowest possible level in order that we may encourage the use in the average family of more and more electric labor-saving devices.
>
> "We are, for instance, far behind our neighbors in Ontario in the use of household electricity for a multiplicity of purposes."

THERE are probably no passages of general reading interest that throw more light on this ancient wrangle over Ontario-New York rate comparisons than the dialogue reported in the testimony taken before the Commission on the Revision of New York Public Service Commission Law, between the commission examiner and Mr. Floyd L. Carlisle, chairman of the Board of the Niagara Hudson Power Corporation.

First of all he made the point about the fact that the Ontario plant operates without taxes. He said if his company were allowed tax exemption, its rates, of course, would also be considerably lower but he did not claim that this alone would explain the rate discrepancy. He laid more stress on what he seemed to believe was a discrimination in the Canadian schedules favoring domestic consumers at the expense of power customers. He pointed out that while Canadian domestic rates for current were lower than the American rates, the contrary was true with regard to commercial power rates.

Here is an interesting leaf from Mr. Carlisle's testimony:

> MR. DONOVAN—Have you made an analysis on the actual bills for similar quantities of energy in various New York and Ontario cities?
>
> MR. CARLISLE—I have not. I have made this, every city, every community within the province is given here with its average kilowatt hour monthly consumption and its average kilowatt hour prices, if it is interesting at all to the Commission to see some of the variations in this regard. For instance, I will read from Group 2 of Statement D. We start off with a town with a population of 2,200 people, called Alexandria; the average kilowatt hour price paid for energy in 1928 in that town was 5.2 cents per kilowatt hour.
>
> At Brampton, which is a city of 2,100—at Carleton Falls, with 4,200 population, the average kilowatt hour price was 4½ cents. These prices range from a place in Kincarden where the average monthly price was 6.1 cents, they range from 1½ cents, roughly, up and down through this gamut.
>
> CHAIRMAN KNIGHT—For domestic consumption alone?
>
> MR. CARLISLE—Yes. There are places as high as 10 cents per kilowatt hour, which is paid in the small communities, and properly should have been paid. The point I am trying to make here is that there is no uniformity. The obvious principle under which the Commission is operating, because it is a publicly owned affair, presumably is to give to the domestic consumer a rate lower than any other rate, and to charge to the commercial light service and the power service presumably a rate upon which they can—I will put it this way, that they charge for that service a higher rate than we charge. Now the principle upon which the American company has been proceeding, has been that each class of service necessarily bore its share of the cost.
>
> I doubt very much, if we had a rate case here, that we would be permitted, under the laws of the United States, to favor one class of customer against another. I do not say they are doing it, but I say that their rates are lower for the household consumer than ours, and higher in the other classes.

MR. Carlisle also stated his conclusion as to the comparative development which has resulted from the operation of the American and the Canadian policies. Here is another leaf from the testimony:

> MR. DONOVAN—Mr. Carlisle, just to come to the basis of comparison, it has

been said that population and distribution of industrial distribution, load factors, etc., are so different, there is no true basis of comparison between Ontario and New York. Do you think that is a correct statement?

MR. CARLISLE—I do not.

MR. DONOVAN—Have you seen the report testified to here the other day undertaken by a group for the American Economist Association?

MR. CARLISLE—I tried to plow through it. I am frank to say I did not read it very carefully.

MR. DONOVAN—They state, "We think the advantages of the different systems do not offset each other sufficient to warrant comparison." Would that be your view?

MR. CARLISLE—Well, when you mean comparison, are they so different as to make impossible comparison? I will put it this way: Toronto and Buffalo are cities of almost similar size. Each has the same climate, the same location with reference to Niagara Falls, if there ever was a basis of comparison of two communities lying on either side of a great river, and having two cities of about equal size, so far as ability to make comparison, it exists there with extraordinary similarity. It could not exist like that in any other two cities of the United States. Now it is true that the Hydro does a business in the other parts of the Province, but those parts very largely are similar to the situations in Northern New York for instance, our small towns, our rural conditions, they well compare.

MR. DONOVAN—Would it not be a fact that you have such a large business at Niagara Falls industrially, generally, to throw out your calculations?

MR. CARLISLE—No.

MR. DONOVAN—Why do you say "no" to that?

MR. CARLISLE—I say that they had the same opportunity to do exactly the same thing. They draw their water from the same river, in the same locality, with very largely the same type of people in the locality, except that one is stamped Canadian and one is stamped American, and with that record Niagara Falls grew. It grew long ahead of the Canadian side due to the mechanical use of the power in the old days, and there was something for industry to start quicker from. But I can see no fairer related territory and general comparative condition than exist right across the two sides of the Niagara river.

MR. DONOVAN—I suppose there are reasons for the difference, but the fact is, nevertheless, that there is such a great industrial use on this side at Niagara Falls, that does not void the comparison?

MR. CARLISLE—There is no reason in the world why it should not be on the other side if they offered the same advantages.

MR. DONOVAN—But I am dealing with the facts.

MR. CARLISLE—But the fact is, it has not grown there.

MR. DONOVAN—I wondered if for that reason, I wanted to be sure that we understand each other, that fact existing, is there a fair basis of comparison?

MR. CARLISLE—The Ontario system has not the load factor of our system. They could have a better load factor than our system, if they could attract industry there, because we have to supply so much by steam. Now we have beaten them, using steam.

THE testimony of Mr. Carlisle with reference to the Ontario project was prefaced by the following statement as to the hydroelectric power commission of the Province of Ontario.

> "Our company exchanges power with the Hydro-Electric of Ontario. The management is acquainted with the gentlemen who run and operate the hydro-electric power commission of Ontario. We have the very highest regard and respect for their character, integrity, and ability, and I make no mental reservation that it is the best of all the publicly owned and operated public utilities in the world.
>
> "Now I want to say this further for them, they, so far as I know, have never made any invidious comparisons with any other company, private or public. They are going about their business in a normal way on the policy adopted by the government, which they are pursuing, and in nothing that I say do I wish to be construed in any manner in criticism of the Hydro."

It is very difficult for the average man to get the truth about the comparative benefits of the operation of the Ontario system and privately owned systems. It is well established, however, that mere comparisons of rates are of little evidential value unless all of the factors which enter into the problem are considered, together with all of the circumstances which affect the operation of the utilities sought to be compared. The question of the indirect benefit to the public from commercial developments as the result of utility service is very often overlooked.

TESTIMONY OF FLOYD L. CARLISLE BEFORE THE COMMISSION ON REVISION OF THE PUBLIC SERVICE LAW OF NEW YORK STATE. December 19 and 20, 1929.

Facts as a Corrective of Misunderstanding of Utility Problems

"IF," said Samuel Insull eleven years ago, "we, openly and boldly, do our share in this crisis by challenging the fallacies and misrepresentations uttered against the public utility business, we shall be doing a service to the whole state, and to the future generations of its citizens."

Mr. Insull sticks to his guns on that position. In a recent address at a luncheon in Chicago, in honor of the eleventh birthday of the Illinois Committee on Public Utility Information, he said:

> "A large and expanding industry like ours is always subject to public and political misunderstanding, and to more or less public and political jealousy. New generations are constantly coming along, taking an interest in public affairs. New politicians are taking the place of the old politicians. These coming generations and politicians need to be told the facts about our enterprises just as much today, as they needed to be told the facts eleven years ago.
>
> "They need to get a better understanding of utility financing, its peculiarities and its requirements; the difference that exists between the financing of an industry where you only turn your capital over once in four or five or six years, and an industry that turns its capital a number of times a year."

The subject of rate making also needs elucidation in Mr. Insull's opinion. Upon that subject he said:

> "Then the subject of rate making is a subject which calls for a great deal of educational work. It is a common thing to read in the daily press of the splitting up of capital stock, the creation of big holding companies, the erection of great financial edifices for the extension of the utility business; and it is a common thing for the every-day, ordinary politician, and for the private citizen, to assume that this means a greater burden upon the people instead of a lesser one, as is the case, as a rule. It is necessary that we should carry to our customers the message that rate making is not based upon capitalization, but is based upon the value of the property used and useful in the industry. This educational work can be done to very great advantage by such an institution as the Illinois Committee."

MR. Insull called attention to the danger of federalizing regulation. Upon this point he said:

> "If you should accept the statements generally made by politicians, especially politicians engaged in national affairs, you would naturally assume that the greater part of the energy produced in this country is energy which can be classed as belonging to interstate trade. Whereas, as a matter of fact, of the amount of energy produced in the United States, but a very small proportion of it crosses state lines.
>
> "That very small percentage is the only portion of our business that can be considered at all as having an interstate character. Hence there is little warrant, in fact, for national or Federal interference in state affairs, in so far as our industry is concerned. But it is only by the work of such organizations as the Illinois Committee, that you can expect that fact to be brought home to our customers, and brought home to them in a way which will lead them to the conclusion that they are infinitely better off, and are infinitely more likely to get proper protection under state regulatory bodies than they are under Federal regulatory bodies."

SAMUEL INSULL FOR CONTINUANCE OF BOLD, OPEN POLICY. *American Gas Association Monthly.* March, 1930.

Why Valuation Questions Cannot Be Settled by Congress

W. CHARLES Poletti believes that the Federal Government must assume a leading role in the regulation of the electrical industry. He believes that only through legislation by Congress "will the courts be able to emerge from the judicial morass and quagmire into which they have been slowly burying themselves." Referring to conflicting valuation theories he says:

"Irrespective of the intrinsic merits of each theory, the determination of a proper basis of valuation should not rest with the Supreme Court. Congress, through which the people of the United States may make themselves heard, should decide that question. And if the Supreme Court has finally adopted the reproduction cost theory, it may become necessary for the people, if they disagree with the opinion of the court, to seek a remedy through legislation."

On the question of return he says:

"But again, despite the fact that the Supreme Court is composed of very capable men, the sole decision as to what is a reasonable return on the investment should not rest with the court. It is rather for the collected opinion of all the people, crystallized through Congress, to declare whether the industry is not so affected with a public interest that it ought only to receive, say, a net return of from 6 to 7 per cent."

Valuation questions could, of course, be settled by Congress were it not for the Federal Constitution. But the fathers of the American Nation considered it wise to set limits upon legislative power in the fundamental law of the land. This was to prevent the legislative branch of the government from riding roughshod over the people. As long as the Constitution exists, Congress cannot do what it pleases with reference to settling valuation questions.

Nor can Congress settle questions of return. Neither can the courts. The question of what constitutes a reasonable return can be settled only by the man who has money to lend. Capital cannot be commandeered.

—D. L.

SUPER-POWER. By W. Charles Poletti. *The Forum.* April, 1930.

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COMPOSITE PUBLIC UTILITY COMPANIES: SOME CAUSES AND EFFECTS ON PUBLIC UTILITY HOLDING CORPORATION SYSTEMS. By Kenneth Field. *The Journal of Land & Public Utility Economics;* pages 74–82. February, 1930.

REGULATION OF PUBLIC UTILITY INTEGRATION ON THE PACIFIC COAST. By Barclay J. Sickler. *The Journal of Land & Public Utility Economics;* pages 51–64. February, 1930.

A DOZEN NATIONS REGULATE HIS RATES. By Earl Chapin May. *The Nation's Business;* March, 1930. A study of Col. Sosthenes Behn, Chairman of the International Telephone & Telegraph Corporation.

LION-TAMER PUBLICITY IS HURTING UTILITIES. By Raymond S. Tompkins. *The Nation's Business;* March, 1930. Comments on public relations policies, good and bad.

The March of Events

Alabama

New Contract for Muscle Shoals Power

An agreement between the Alabama Power Company and the War Department for the purchase of current from Muscle Shoals for the calendar year of 1930 has been filed with the Alabama Commission. The company guarantees payment of $560,000, which is $60,000 more than was paid for current in 1929.

The company is to purchase current at a rate from 2 to 4 mills per kilowatt hour, which will be applied toward the guaranteed minimum. The contract contains a condition that the Secretary of War may cancel the agreement if, in the meanwhile, Congress should make some disposition of Muscle Shoals. In case of cancelation the company is to be relieved of the guarantee, except if payments at the agreed rate do not exceed the operating and maintenances, the company will make a further payment so that the total payment made shall equal the operating and maintenance expenses, but not to exceed $16,000 per month or fraction thereof for the expired period.

California

Voters to Pass on Bond Issue for Crossing Elimination

An initiative measure providing for a $10,000,000 state bond issue for the elimination of railroad grade crossings will be passed upon by the voters at the November general election. If adopted the measure would permit the legislature to issue bonds for the various projects by a two-thirds vote and subject to referendum by the people. A limitation of $10,000,000 is fixed for the amount of bonds that may be outstanding at any one time. This amount, it is estimated, would provide potentially for $25,000,000 worth of work. The San Francisco *Chronicle*, in an article on this crossing project, continues:

"The cost of the proposed grade crossing eliminations would be borne jointly by the cities and counties affected, the state, and the various railroads. The state's contribution in any given case is to be $2 for every $1 provided by a municipality or county, the state's expenditure in a single instance being limited to $50,000.

"The funds derived from the proposed bond issues are to be divided between the northern and southern counties of the state in accordance with the present allocation of state highway funds."

Georgia

Court Asked to Restrain New Gas Rates

The Georgia Public Utilities Company has started proceedings in Federal court to enjoin the enforcement of the new schedule of gas rates adopted by the Public Service Commission recently. In asking for the restraining order the company set up a schedule of rates which it wanted to apply during the course of litigation on the subject. These are the same rates asked by the company when the Commission was considering the matter of rates for Augusta. The schedule was for the first 200 cubic feet, $1.50 net; for the next 2,800 feet, $1.45 per thousand cubic feet net, and all over 3,000 cubic feet,

$1.25 per thousand net for all gas consumed.

The schedules approved by the Commission in its revision of Augusta gas rates were for the first 2,000 cubic feet, $1.40 per thousand net; for the next 3,000 cubic feet, $1.20 per thousand net, and for all over 5,000 cubic feet, $1 per thousand net. In addition there is a service charge of 85 cents per month. The former rates for Augusta were $1.85 per thousand cubic feet for the first 10,000 feet.

Illinois

Agreement Reached on Transit Franchise "in Principle"

SUGGESTIONS of a bankers' committee for the financial structure of the proposed street railway consolidation in Chicago have been approved by the council franchise subcommittee "in principle" with two exceptions, according to the Chicago *Tribune*. The mayor's floor leader, on March 18th, said that an ordinance should be ready in a month. The *Tribune*, in discussing the situation, says:

"The aldermen and transportation interests, it is recalled, agreed nearly two years ago on 'the principles' which should be embodied in a franchise, but they have never been able to get together in the actual application of 'the principles' to the text of a franchise ordinance. Therefore, it appears that the amount of progress attained by the action of the franchise committee in yesterday's meeting is difficult to estimate at the present stage.

"The bankers' committee suggested that the new consolidated company be given a 'fair and reasonable' return on its investment to be fixed from time to time by the regulatory commission. To that the aldermen agreed, but they did not say what the return shall be until the commission is organized, nor how long it shall remain in effect.

"The bankers suggested compensation of 3 per cent of the gross receipts be paid to the city, but to be paid after interest charges and dividends on preferred stock. To that the aldermen assented 'in principle' and some of them expressed the opinion that such an arrangement is better than the present one by which the surface lines pay 55 per cent of net income to the city.

"The bankers asked for a renewal and depreciation fund. That too was approved 'in principle.' On the surface lines that fund at present is 8 per cent of the gross income, and some of the aldermen thought it might be cut to 7 per cent.

"The bankers suggested that the new company be relieved of the cost of cleaning and sprinkling streets. Another approval 'in principle' by the aldermen. The bankers asked that the compensation of the city be used for subways, added transit facilities, and for amortization. The aldermen approved again with the specified limitation.

"Two other suggestions of the bankers were not approved. One would relieve the company from the cost of paving between its tracks and the other from the cost of moving tracks in street widenings."

Kentucky

Perpetual Franchise Claimed by Utility

JUDGE D. C. Jones, on March 1st, held a hearing in the suit of the city of Middlesboro against the Kentucky Utilities Company in which the city contends that the franchise of the company has expired and that the company is operating without either a franchise or a contract. The company, however, asserts that it has a perpetual franchise, owing to certain rights which it purchased when property of the Middlesboro Town and Lands Company was taken over.

The case has been in court for over a year. In the meantime efforts have been made by city officials and a citizens' committee to negotiate a new agreement for electric light and water rates in the city.

Maryland

One Hundred Fifty New Cars for Baltimore

THE United Railways, it is announced, has ordered the construction of 150 new street cars of a type said to be superior to any ever operated in that city. This number is 100 more than were promised by Lucius S. Storrs, executive chairman of the board of directors, after the Supreme Court decision granting an increase in car fares.

Mr. Storrs has stated that this is the first item in the company's program to improve street car transportation, at a total cost of more than $2,500,000. Other improvements in rolling stock, says the Baltimore *Evening Sun*, will bring this total well over the $3,000,000 mark. The *Sun* informs us:

"The cars are being constructed under specifications which have been drawn up by the street car company and approved by the Public Service Commission. Construction work already has begun and deliveries are expected late in September, Mr. Storrs said.

"From the wheels to the interior lighting and ventilation the new trolleys are said to represent the latest in street car design.

"The other improvements which are being carried on at the shops of the United on the present rolling stock involves the production of new articulated trains and a number of cars of the more rapidly accelerating type, similar to those recently put into service on the Fremont avenue line.

"The new cars will be made to order on plans drawn up by representatives of all the electric car manufacturers of the country, who were asked by the United to aid in the designing."

Massachusetts

Promotional Gas Rates Under Fire

AT a hearing before the Commission on March 11th, new schedules of rates filed by the Salem Gas Light Company were attacked by representatives of the city of Peabody. City Solicitor Louis F. O'Keefe asserted that the reason the city of Salem had favored these rates was because there was an understanding with the Eastern Massachusetts Light Company to build a $5,000,000 plant in Salem.

The general counsel for the company said that the new rates, if allowed, would permit the utility to increase sales, since the company in the past has been hampered in the matter of increasing its sales because of competition with other fuels. The new rate includes a service charge of 50 cents per month per customer and a net commodity charge of $1.25 per 2,000 cubic feet of gas consumed each month.

A witness for the utility informed the Commission that the new schedule based on last year's consumption would reduce the company's income by $6,000, but he maintained that it would ultimately bring about increased sales to domestic users which would offset this reduction.

The assertion that the city authorities of Salem had approved the new schedule because of an understanding with the Eastern Massachusetts Light Company was denied by the attorney for the company. Vernon M. F. Tallman, expert witness of the utility, testified that he knew nothing of any such understanding but he believed that city authorities in Salem had become convinced that the new schedule would work to the advantage of Salem consumers.

Michigan

Detroit Fare Increase Is Indefinitely Postponed

THE proposal to increase fares on the Detroit street railway system was beset with so many afflictions that the street railway commission indefinitely postponed the increase. Two suits were started in court to enjoin higher fares, part of the city officials opposed the proposal, and Mayor John C. Shields of Highland Park threatened to bar the street cars from Highland Park unless he was entirely satisfied that the increase was necessary.

Reports of auditors have shown that the system is losing money, but members of the city council, particularly those who were active in securing municipal operation of the lines, insist upon keeping the present fare.

Del A. Smith, general manager of the system, although urging an 8-cent fare, is quoted in the papers as expressing resentment over a statement that the system is "going to pieces."

John H. Morgan, consulting auditor of the department of street railways, is quoted in the Detroit *Free Press* as stating:

"This year we raised $5,000,000 through bonds and next year we will need another $7,000,000. In the following year $5,000,000 more will be needed for replacements. We have been borrowing from Peter to pay Paul. We have neglected service and deferred maintenance. Out of the $1,750,000 you say will be available in the future, you must subtract the $775,000 which the projected $5,000,000 bond issue will involve."

Mr. Morgan told the council that the department had been running from the start in violation of a charter provision requiring that all charges, in which he included depreciation charges, should be provided from fares. He said that 95 per cent of all public utilities which fail to set up a depreciation fund will find themselves in the same trouble as the Detroit lines at the present time.

State Claims Right to Operate Radio for Police

"No Surrender of Air to Jazz," is the heading of an article appearing in the Chicago *Tribune* which quotes Governor Fred W. Green on the subject of a radio broadcasting station for police purposes at Lansing, Michigan. The *Tribune* goes on to say:

"Michigan is exercising a fundamental right under the Constitution and operating a radio broadcasting station for police purposes, and it recognizes no limitation on that right by a Federal Commission that prefers to reserve the air for jazz and advertisements, Governor Fred W. Green today declared in a formal statement.

"His broadside was provoked by the Radio Commission's action in ordering the department of justice to arrest any persons responsible for building or operating a radio station in this state without sanction of the Federal body.

"The executive office today was deluged with congratulatory letters and telegrams from influential men in all parts of the country who commended officials for their firm stand.

"The transmitter planned by the state at East Lansing is to be of 5,000 watts power and probably will operate on a wave length of around 124 meters, well below the broadcast band of ordinary receivers. Bids for construction of the station are being inspected now."

The Governor is quoted as follows:

"The police power has been reserved to the several states. It is not subject to any limitation, but is a sovereign power. In exercising its duty of protecting its citizens from bandits and gunmen the state of Michigan has found through the experience of the city of Detroit that there is no more effective way of apprehending criminals than by the use of radio.

"The legislature of Michigan provided funds, $25,000, for a state police broadcasting station, through which our scout cars patrolling the main highways could be notified instantly upon the discovery of crime. In the interest of comity we asked the Federal Radio Commission to assign a wave length to this station. The Commission indicated that we would get no wave length.

"If we should wait two months for a hearing before this Commission (the date set by the Commission is May 15th), and then wait in all probability as long for a decision, Congress would have adjourned for the summer. If congressional action were desired, it would then be many months before it could be secured."

Minnesota

Negotiations for New Gas Franchise

The city of Minneapolis and the Minneapolis Gas Light Company, according to latest reports, were still attempting to arrive at an agreement on a new franchise. The old 20-year franchise of the company expired February 24th but the company was given the right to operate until May 1st. The company proposed a new rate schedule and sought an injunction from Federal court to prevent the city from interfering with it. The injunction was denied.

The city had attempted by ordinance to fix the rates. It was contended by gas company representatives that the city charter did not give the council the right to fix gas rates. Penalties, coupled with the rate ordinance, were alleged to be illegal. The company took the position that under decisions of the Supreme Court a public utility permitted to operate without a franchise is permitted to make its own rates.

Federal Judges Joseph W. Molyneaux and

John B. Sanborn, in denying an injunction, concluded that the city should have until May 1st to endeavor to negotiate a new franchise, or in case that should be impossible, to adopt an ordinance prescribing a system of rates and charges which the city considers reasonable. The court disclaimed any attempt finally to determine whether the city was clothed with rate-making powers or whether there was any limitation upon its right to enter into a contract fixing rates. It was said that the injunction was denied largely as a matter of discretion.

A valuation of the property ranging from $20,000,000 to $23,000,000 is claimed by the company, while counsel for the city has asserted that the value is not more than $14,500,000 at the most and probably could not exceed $11,800,000.

The proposal of the company provided a minimum charge of $1 for the first 300 cubic feet of gas and a meter rate ranging from 85 cents to 68 cents for blocks of 1,000 feet thereafter. The present rate is 89 cents per thousand cubic feet, but the city recognizes the advisability of some sort of step-rates and its experts have proposed a schedule providing a minimum charge of $1 for 700 cubic feet and meter rates ranging from 80 cents a thousand down to 69 cents a thousand. Such a schedule, its sponsors contend, recognizes the gas company's claim that small consumers now pay less than the cost of their service and increases their bill slightly, but the average small consumer of 300 cubic feet a month under this plan would pay only 17 cents a month more than under the 89-cent rate. The lower rates for industries would give a distinct incentive to use gas and would encourage new industries, it was suggested.

Missouri

Substitution of Trackless Trolleys for Busses Opposed

THE Board of Public Service in St. Louis, on March 18th, held an informal hearing on the application of the Public Service Company to erect poles and wires for the trackless electric trolley system to displace gasoline busses on Vandeventer avenue.

The plan has been vigorously opposed by property owners and business men, who object to the appearance of the street if wires are erected; to the fact that abutting property has paid for all the paving of the wide street, relieving the car company of the cost of paving between the rails that it must pay for a car line; to anticipated interference of the trackless trolley with parking and traffic; and to the anticipated danger that the trackless trolleys would prove hard on the lanes of pavement where they would operate.

At the hearing moving pictures of trackless trolleys operating in other cities were shown. The St. Louis *Post Dispatch* says in part:

"The pictures showed the trackless trolley darting in and out of traffic, up to the curb for passengers, and around pavement holes, over a lane 20 feet wide, without its twin trolley poles leaving the wires. Most of the installations shown used cross wires to support the power lines, but some narrow New Orleans streets have brackets extending from poles to support the wires. Datz said the appearance was bad if the brackets got out of line. In Salt Lake City street cars were shown deriving power from one of the wires."

One of the few persons who favored the trackless trolley plan told the board he did not consider the avenue beautiful inasmuch as it was faced in places by slaughter houses, a city garbage wagon stable, factories, and a Negro residential district. He declared the bus service was not so good as it should be and that objections to the bus were the presence of the gasoline tank, fumes, and insufficient heating, while he thought the trackless trolleys would start and ride more smoothly.

Nevada

Commission Protests against Rail Combine

THE Nevada Public Service Commission, through its Chairman, J. F. Shaughnessy, has requested the Interstate Commerce Commission to deny the application of the Western Pacific and Great Northern railroads for authority to construct a 200-mile connecting line between Klamath Falls, Oregon, and Keddie, California. The Reno *State Journal* says:

"In a brief filed with the Commission, the

State Public Service Commission appears as intervener in the case, and Chairman Shaughnessy points out that Nevada has a substantial interest and is entitled to protection on the ground that this is an unnecessary burden of capital expenditures, which would be added to the group valuation base and would later be reflected in the increase in rates to Nevada producers and consumers, or urged as a reason why they should not have a reduction in rates.

"Further, Shaughnessy sets forth in the brief, the territory in question is already adequately served by two lines of railroad operated by the Southern Pacific—one on the western slope of the Sierra Nevada range and the other, recently put into operation, on the eastern slope, extending from Fernley to Klamath Falls."

Because of the location of railroad shops many workers would be affected, it is said, by a new line. Chairman Shaughnessy pointed out that the territory to be served by the proposed extension is not susceptible of the development of any particular volume of either local or through traffic; that the through business to be developed is limited to the production and transportation of lumber and livestock, and that it would not be necessary to provide additional facilities for these industries. The lumber business, he said, is overdeveloped at this time and it has been necessary for the industry to curtail operations.

Commissioner Shaughnessy attacked the theory that a competitive route should be established, as he did not consider this sound. He pointed out that if this were carried to its ultimate analysis there would be no limit and the old competitive policy of the survival of the fittest would become the rule of procedure for the future.

New Jersey

Commission to Hear Arguments on Tokens

THE Public Utilities Commission has ordered a hearing to be held on April 17th concerning the plan of Public Service Coordinated Transport, now in effect experimentally, to sell 10 tokens for 50 cents, with a 10-cent cash fare, on trolleys and busses.

It is believed that by that time figures on results of the experiment for the past three months will be available so that the Commission may determine what fares should be approved for the future. Many informal and formal requests have been made by municipalities for a public hearing but the Commission has taken the attitude that this would serve no good purpose until definite figures are available.

Several legal efforts made in the chancery court and supreme court to halt the new token plan failed. The courts held that the Commission had acted reasonably in not suspending the new schedule. Officials of the State League of Municipalities, according to the Newark *News*, have estimated that the percentage of riders paying a 10-cent fare probably ranges from 3 to 3½ per cent of the total fares received from trolley car and bus operation. There has been a decrease in riding the first two months of this year but this has been attributed to the present industrial depression.

New York

Phone Company Appeals to Supreme Court

JUST ten years after the New York Telephone Company began its first move before the Public Service Commission for increased rates, says the New York *Herald-Tribune*, the case has been appealed to the Supreme Court of the United States for a final determination of what constitutes a fair rate of return on the telephone investment and other points long in litigation.

Announcement of the company's action was made by Charles T. Russell, vice president and general counsel, on March 26th. The appeal is from the decree issued on December 27th by the special statutory court for the purpose of reviewing certain points wherein the company believed that the court erred in a manner prejudicial to its interest.

The telephone company had contended for an 8 per cent return but was allowed 7 per cent by the court. The state and the city of New York contended for a 6 per cent return.

This appeal, it is said, will have no effect

on the hearings now being held by the Commission on the temporary rates allowed between February 1st and May 1st.

Rehearing Granted in Brooklyn Borough Gas Case

THE Commission last month granted a rehearing in the case affecting gas users in the Ocean Front district of Brooklyn served by the Brooklyn Borough Gas Company. The company in 1927 was charging $1.30 per thousand cubic feet of gas. On June 30th of that year the company filed a new rate of $1 for the first 200 cubic feet or less with a rate of 11 cents per hundred for additional gas. Objections were made and the case came before the Commission.

After hearings were concluded and the briefs filed, the company in January, 1929, reduced the rate from 11 cents to 10½ cents on gas used beyond the initial 200 feet for $1. Thereafter the Commission further reduced the rate to 10 cents, although retaining the initial charge of $1. This was opposed by the Utility Consumers League, which filed petitions for a rehearing.

Niagara Falls Agrees to Higher Car Fares

THE city council of Niagara Falls has consented to an increase in street car fares from 5 to 8 cents. Bus transportation facilities were promised by the company, in return, in a section where it is said no independent operator would attempt to serve.

Trolley company officials assert that they lost $26,200 last year operating at the Falls. Two of the city councilmen who opposed the agreement alleged that instead of a deficit the company earned a profit.

The company is also seeking higher fares in Buffalo. Accountants have been preparing a report which is to be used at a hearing on the application before the Commission on April 24th.

North Carolina

City Officials to Decide on Transportation Plan

THE city of High Point has been called upon by officials of the North Carolina Public Service Company, a subsidiary of the Duke Power Company, says the High Point *Enterprise,* to decide what means of public transportation the city wants. During the past three years the company has been operating busses but it has also been forced to maintain the car tracks and stand ready to restore street car service upon demand. The company has a contract with the city which has thirty-nine more years to run. This calls for the operation of street cars, but about three years ago an agreement was reached whereby the cars were eliminated and busses put into operation.

The company is reported ready to continue operation of busses, but if they continue to operate these instead of street cars they demand the right to remove the tracks. In case the city does not agree to this, the company, it is said, desires to discontinue the operation of busses and begin again the operation of street cars. Officials of the company are quoted as saying that street cars can be operated more conservatively than busses and that the large expense in the operation of street cars is the cost of maintaining the necessary trackage. At present the company not only operates busses but keeps up the tracks.

Ohio

City Gains Right to Raise Water Rates

AN injunction to prevent the Youngstown city water department from collecting higher rates was denied on March 7th by Judge David G. Jenkins. Opponents of the new rates attempted to show that the revenue derived by the water department would be in excess of the sum needed for operating expenses and payments to the Mahoning Valley Sanitary District. The judge held that this was "a matter of simple arithmetic" and overruled the contention.

The transfer of the burden of paying for

a new water district from the taxpayer, by general taxation, to the water consumers, by increasing water rates, was claimed to be retroactive and in violation of constitutional rights. Judge Jenkins, however, held that no vested right rested with the water consumer and denied the injunction which would have prevented the city from collecting the increased rates on March 15th. Hearings on the permanent injunction will come up later.

Oregon

Higher Street Car Fares in Portland

TEN-CENT fares for street car riders in Portland went into effect on March 6th. The former fare was 8 cents. School children can get books of 20 tickets for $1 and adult patrons books of tickets for 10 cents straight. The Portland *Journal*, in commenting upon the reaction to the new fares, says:

"The fellow who usually had such a cheery good morning for the conductor grumbled a bit as he poked around in his pocket for a thin dime. And the conductor, generally so affable, was too busy trying to remember not to give back 2 cents to waste words.

"One woman passed an 8-cent ticket to the conductor and looked insulted when he called her back to part with 2 cents more. Another passenger snorted a sharp "Well!" when no change for his dime was forthcoming.

"And a conductor swore softly to himself when, in spite of his concentration, he did hand back 2 cents for 10."

A move which, according to the Portland *Oregonian*, has been frankly characterized as an effort to save money for the city, was made by the Public Service Commission when its members declared that the Commission would work with the city for a reduction in street car fares. The *Oregonian* says that the Commission made it plain, however, that it would not work with certain experts retained by the city to value the property. The city council, by a four-to-one vote, employed the experts for $18,000. Officials in favor of this procedure heaped abuse upon the Commission in a stormy session. City Commissioner Barbur, in opposing employment of the experts, said that he could see no reason to pay the figure asked and that the council did not know what it was doing.

Governor A. W. Norblad wrote to the Commission on March 6th requesting that it cooperate with the city experts notwithstanding the fact that the Commission may have been assailed or criticised, either justly or unjustly, by officials of the city and by engineers employed by the city.

Pennsylvania

Water Company Sues Consumers

THE Scranton-Spring Brook Water Service Company, on March 11th, filed suit against forty customers to collect its bills after the Commission had authorized a temporary rate increase and large numbers of consumers refused payment. The company had issued warnings to delinquents by writing and had also advertised in the newspapers that unless the water rates were paid, court action would be taken against those who did not pay.

The opponents of the higher rates, which have been involved in Commission proceedings for many months, disagreed among themselves as the rate case neared its end. This resulted from the preparation of a supplemental brief by Luzerne county attorneys to support lower rates in Luzerne county than in the Scranton district. Former Solicitor C. B. Little, in behalf of Lackawanna county water consumers, termed this a "vicious attack" and he wrote a vigorous protest to Attorney John R. Geyer, representing Luzerne county. The Scranton *Times* says:

"Geyer was originally retained by the Luzerne county executive committee with the explicit understanding that he was to serve Luzerne county alone. Later, after obtaining the consent of his original clients, Geyer consented to act also for the Lackawanna county complainants.

"Section of the Luzerne county's supplemental brief set up the claim, it is understood, that the valuation was given a greater boost there than it was in the Scranton system; also that operating revenues are normally higher in the former Spring Brook Water Supply Company division. Such allegations, if actually made, might influence the Public Service Commission to give the Luzerne county patrons a lower rate than the Scranton consumers when the final decision is made, in the opinion of the Lackawanna county lawyers."

Rhode Island

Bill to Provide Regulation of Taxicabs

LEGISLATION designed to place all taxicabs operating in the state under the supervision of the Public Utilities Commission is provided for in a bill introduced in the House of Representatives on March 11th. The bill, according to its sponsors, would end the taxicab war which has waged for months in Providence.

The bill would give the Commission authority to fix rates and regulations governing taxicabs and would also give it blanket authority to establish regulations with regard to the necessity for additional cabs. Certificates from the Commission would be required for all taxicab concerns in the future. The Providence *News-Tribune* states:

"The Car-men's Union in a signed letter to the U. E. R. management, says that the taxicabs are taking employment away from the men who have spent the best years of their lives in the employ of the local traction company. The men contend further that the operators of these cabs, who in some instances work fourteen to sixteen hours a day, should be regulated by some state authority.

"Financial responsibility as required under the statutes relating to the operation of busses in this state will be placed upon the owners of taxicabs in the event that the bill to be introduced today becomes a law.

"A statement sponsoring the act, which was prepared by the law firm of Edwards & Angell, was made public today by L. C. Gerry of the firm of J. J. Bodell & Company, of this city. Mr. Gerry is vice president of the R. I. Public Service Company, which was incorporated as a holding company for the New England Power Association to operate the Narragansett Electric and the United Electric Railways Company in this city following the merger of the two concerns some four years ago."

Tennessee

General Hannah Will Probably Seek Re-nomination

ALTHOUGH he has not yet made an official announcement, says the Memphis *Press & News*, political circles know that General Harvey Hannah, chairman of the State Railroad and Public Utilities Commission, will make the race for re-nomination in next August's Democratic primary. The newspaper, in commenting upon this prophecy, continues:

"Hannah's 6-year term, to which he was re-elected in 1924, expires this year. He will be a candidate for another 6-year term.

"General Hannah, a veteran of the Spanish-American war, has long been known as one of the real 'spellbinders' of the Democratic party and was recognized as such at the last Democratic National convention, when he was chosen to put the name of Cordell Hull in nomination for the presidency. He was a leader in the Democratic 'wrecking crew' which in 1928 made a flying tour through West Tennessee in the interests of Alfred E. Smith, party nominee for President.

"Hannah's home is at Oliver Springs. He represents East Tennessee on the Railroad Commission.

"As a Public Utilities Commissioner, General Hannah has distinguished himself nationally. Last fall, at the National Convention of State Railroad and Public Utilities Commissioners, Hannah was unanimously elected vice-president by acclamation—the first time any man had been so honored without contest. He will succeed to the presidency next fall according to the custom of the national association."

Utah

Commission Intervenes in Railroad Purchase Plan

THE Commission has forwarded to the Interstate Commerce Commission a petition in intervention in connection with the application of the Denver & Rio Grande Western railroad to purchase the Denver & Salt Lake railroad, according to the Salt Lake *Tribune*, which states:

"To grant the application, the Utah Commission asserts, would be inimical to the public interest unless two reservations and

conditions are attached. The first is that approval will not at any time be construed as a reason against permitting the construction of a railroad through the Uintah basin, to form part of a new transcontinental route extending from Denver to Salt Lake and Ogden.

"The second condition asked by the Public Utilities Commission is that the approval be upon the express condition 'that an open gateway shall be provided over the Denver & Salt Lake railway between Denver and Craig and any extension thereof westerly or connection therewith made by any other transportation agency desiring to build a line traversing and serving the Uintah basin, through to Provo, with connections with transcontinental lines."

Vermont

White River Railroad Reorganization

THE Public Service Commission on March 24th had before it a petition for reorganization of the White River Railroad which runs from Bethel to Rochester and which was crippled by the 1927 flood. The Burlington *Free Press* informs us that it has been proposed to form a new corporation to be known as the White River Railroad, Inc., if the permission of the Commission is secured for this action.

Washington

Counterfeit Tokens Discovered

THE discovery of counterfeit copper pieces to represent tokens passed on the municipal street railway has induced the issuance of an entirely new design in Seattle. The Seattle *Times*, in referring to Superintendent George B. Avery, comments:

"The counterfeits displayed by Mr. Avery are a clever imitation of the official full fare tokens in general appearance, but differ widely from them in the lettering around the rim.

"They bear a representation of the well-known signature of the late D. W. Henderson, veteran superintendent of the railway system, who died last year, but represent him as having been superintendent of public utilities.

"Mr. Henderson never held such a position.

"'We should like to recall all of our old tokens and put out a distinctly different issue,' Mr. Avery said. 'There are specimens of nine different official issues now in circulation. Even our street car men can scarcely keep track of them.

"'It is almost impossible to determine how much the municipal street railway system and the public may be defrauded by the counterfeit tokens.'"

Wisconsin

Milwaukee Club Demands Lower Electric Rates

A RESOLUTION adopted by the North Side Citizens Club on March 19th demands an investigation into the possibilities of obtaining lower rates for electric current, says the Milwaukee *Journal*. This paper adds:

"The resolution is addressed to the common council. Attached to it is a copy of an advertisement offering 5 per cent first mortgage gold bonds issued by the Electric Company.

"Statements made in this advertisement are quoted. Net earnings of the company before depreciation and interest were deducted are given as four and one-fifth times the interest on the funded debt for the 12-month period ended September 30, 1929. Figures are quoted showing gross earnings of $31,590,479, leaving a balance of $7,915,806 with depreciation of $2,831,422.

"The resolution also recites that at a hearing before the State Railroad Commission the Electric Company asked for an increase in street railway fares for Milwaukee but that the earnings of the company on its electric light and power business were not discussed and declares that the earnings of the Electric Company 'are greatly in excess of what is allowed them as a reasonable profit.'"

The Utilities and the Public

The Alabama Commission Investigates Intercorporate Relations of Interstate Utilities

THE Alabama Commission has tackled the holding company problem and the interstate supply company problem of utility regulation in a manner that appears destined to have a profound effect on the future policies of the State Commissions. This seems especially probable in view of proposed legislation now pending in Washington introduced by Senator Couzens of Michigan to regulate interstate activities of electric utilities by means of a reorganization of the powers and personnel of the present Federal Power Commission.

Tidings of these two events happening as far apart as Washington, D. C., and Montgomery, Alabama, arrived on the same day by sheer coincidence. But, just as the bill of Senator Couzens attempts to define the powers and limitations of the Federal Government in the regulation of interstate electric utilities and their holding companies, so we believe the Alabama Commission's decision will be a landmark and a pioneer in setting the boundaries of state regulation over the same subject.

Although the Alabama Commission was dealing with gas companies, the principles of regulation are no different than those applicable to electric companies. The proceeding arose when the Commission cited the Southern Natural Gas Corporation, an interstate wholesale supply company, to appear and present all data material to its dealings and relations with the Alabama Natural Gas Corporation, a local distributing utility, which had applied for authority to operate in a number of Alabama communities.

The Commission found that the Southern Company was engaged in interstate commerce and that the corporate relationship admitted by it to exist between the Alabama Company and the Tri-Utilities Corporation, which controls both of them, was such that it vested corporate control and management in a common owner. In other words, the Southern Company and the Alabama Company were under the control of a common parent —the Tri-Utilities Company.

The Commission then pointed out that the state law gave to it discretion to treat any utility, whose property was used as part of the general system of any other utility (through direct or indirect common control) as consolidated with such other utility. This law the Commission interpreted as follows:

> "Since neither the state nor its legislature can by its statute or fiat make one a utility who has not put himself in that position by his own acts, the statute above quoted must be construed as being chiefly a declaration, in part, of the common law or as a legislative construction, in part, of the common law as applicable

to the right of the state to inquire into corporate fictions or corporate relationships, to the end that the state may make reasonable application of its regulations to those who are actually within the statute and in order that the state may not be defeated because of mere forms or fictions."

As far as its interstate operations were concerned, the Commission held that the Southern Company was not required to secure a certificate from it as a condition to issuing securities, and that it was not subject to its jurisdiction in the transportation of natural gas from Louisiana for delivery at wholesale to those distributors in Alabama which were separate and independent companies.

But the Commission did hold that where the Southern corporation, in addition to its operations in interstate commerce, assumed a corporate relationship with the Alabama corporation that affected local distribution by the latter, the state was entitled to treat the Southern Company as if it were consolidated with the Alabama Company. The Commission stated:

> "The fact that such interstate corporation in its other operations is engaged in interstate commerce that can not be regulated by the state, does not prevent the state from reasonable exercise of its authority over such interstate corporation in matters which arise out of or come within the effect of its being treated as if consolidated with the local utility."

The Commissions said that its authority over the regulation of the joint activities of the two companies was limited to such matters as arise out of or come within the effect of its right to treat such corporations as if consolidated, such as supply contracts and other matters affecting local distribution, but that it did not extend to matters which have no connection with this "constructive consolidation," such as the right of the interstate company to do a non-utility business or to issue securities.

An Express Company Cannot Do Its Own Trucking

THE Ohio Commission has denied the right of the Railway Express Agency, Incorporated, to operate motor trucks for the transportation of goods shipped by express over territory where a railroad service, previously used by the express company, has been abandoned, on the ground that such operations would constitute common carriage by motor, and would, therefore, be subject to the usual requirement of a certificate of convenience and necessity exacted of any other motor carrier.

The Commission found as a matter of fact that the express company was not entitled to a certificate over the territory where it sought to operate because the existing service furnished by a duly authorized motor carrier was both adequate and reasonably priced.

The case arose upon the application of the express company which is engaged, according to the Commission, in conducting an express transportation business — nation-wide in its scope, for a certificate to carry its own

express by motor in the territory formerly served by the Wheeling & Lake Erie Railroad which abandoned service last July. The express company had always patronized the railroad when it was in operation. Its application was opposed by two trucking companies—both holders of certificates in the area involved in the controversy.

The effect of the Commission's order will be to compel the express company to patronize the existing motor carrier companies.

An Attempt to Force Prohibition Evidence From a Utility Fails

TELEPHONE companies throughout the country, who are endeavoring to protect their service and public relations from interference by police authorities, will be interested in a recent ruling of the United States District Court that the Pacific Telephone & Telegraph Company is not required to reveal the location of unlisted telephones in connection with investigations by prohibition enforcement officers.

The case arose on an order issued to the manager of the California Company to show cause why he should not be ordered to produce certain records of the company, and why he should not be held in contempt for disobedience of a subpoena issued by the prohibition commissioner.

Judge Kerrigan in his memorandum opinion did not go into the merits of the question of whether or not a telephone utility could be deprived of one of its property rights, (to wit—the right to enjoy the good will of its customers)—by being compelled to give evidence against its own subscribers, and thereby jeopardizing its own public relations. Nevertheless the opinion, although based on purely technical grounds, seems to be broad enough to prevent further embarrassment of public service corporations by enforcement officers.

The court said that to permit a subpoena of such evidence "in aid of an application for a search warrant" would be, in effect, to permit the enforcement officers to usurp the functions of the grand jury. The opinion stated:

> "Whatever the historical origin of the search warrant, and irrespective of the fact that in theory it may still have about it traces of the 'warrant in arrest of goods,' its practical status at the present time is inquisitorial; it is an instrument for the procuring of evidence. The statutes affecting its use are limitations upon the right of those investigating crime to enter and search the premises of citizens. A search may be had only when the facts known are sufficient to establish probable cause for the search. If the ingenuity and skill of the investigators is not sufficient to establish probable cause in a manner which will satisfy the Commissioner or the judge to whom application for a search warrant is made, the deficiencies can be supplied only by further investigation. The subpoenaing of witnesses on the application for a warrant can be for no other purpose than to secure the missing proof."

This ruling is just as effective as a decision on the merits of the utility's

contention would be since the chief purpose of subpoenaing telephone lists or meter inspectors would be to find out names and addresses of patrons suspected of violating prohibition laws. As a result of Judge Kerrigan's ruling unless the prohibition authorities have at least that much information, they have insufficient evidence even for an application for a search warrant and such subpoenas would merely be "fishing expeditions."

Regardless of what we may think of prohibition as a law or as a policy, to compel utilities to act as police informers would be obviously a great burden on them. It is an axiom in the utility business that good service and reasonable rates depend in large measure on good public relations, and not even the most ardent advocate of the prohibition enforcement could convince utility executives in some communities, at least, that giving prohibition evidence against their own customers would be smart public relations.

As an official of the California telephone company involved pointed out, for every telephone subscriber who might sell liquor over the phone there must be many more who buy it—and all are patrons of the utility.

The decision of Judge Kerrigan appears to protect gas and electric companies from having their metermen subpoenaed as well as the telephone companies.

Of course, as we have already pointed out in these pages, a utility's management has a lawful right to surrender such evidence if it *wants to.* Nevertheless, in the interest of public service, utility companies ought to be allowed to pay strict attention to their own business should they decide to leave prohibition enforcement to those who are paid to do it.

The Court Refuses a Fare Increase In Washington

THE Washington street railway companies struck another snag in their efforts to obtain increased fares when Justice Alfred A. Wheat of the District of Columbia Supreme Court denied their application for a temporary 10-cent fare pending a final hearing on the appeal of the company from an order of the District Commission turning down their petition for an increase. Judge Wheat stated that he was not persuaded that the claims of the companies were so free from doubt as to require the temporary grant. Incidentally the court also denied a motion of the District Commission to dismiss the suit. The court stated:

> "The ordinary and generally accepted justification for a preliminary injunction is to preserve a status, not to bring about a new one. It seems to me that the situation is not quite the same as it would be if the Commission had ruled that the existing rates should be reduced."

This carries the fight waged by these utilities for a fare increase into another stage. The Commission turned down their application because it stated that the utilities did not present sufficient evidence of the value

of their properties and had failed to come to a definite agreement as to merging as recommended by Congress.

A State Cannot Bar Interstate Bus Operations

A SHARP conflict of decision has resulted from a ruling of the Federal District Court in Western Missouri restraining the Missouri Commission from interfering with the operations of the Atlantic-Pacific Stages, Incorporated, an interstate bus company.

The Commission had taken the position that it could deny the right of a bus company to operate even in interstate commerce where it was guilty of violating the law with respect to intrastate law.

The Federal court has ruled that the Missouri Commission has no such authority and that its interference in such event is an interference with interstate commerce in contravention of the Constitution. The court pointed out that the remedy of the state was to arrest the company's employees where local law was violated but said that any interference with operations was unjustified.

This decision is in direct conflict with a holding of the Supreme Court of Ohio (P.U.R.1929B, 335) in which the right of the Buckeye Commission to revoke the certificate of the Detroit-Cincinnati Coach Company to engage in interstate commerce because of violation of local law respecting intrastate operations was upheld. A number of other State Commissions have taken this position.

It presents a very difficult question —a question which probably will have to be settled in the United States Supreme Court. The Ohio court takes the position that the state is justified in stopping any interstate operation that will break down the regulation of intrastate business and an interstate carrier that persists in violating local laws in this way forfeits his right to constitutional immunity from local interference.

The Federal court held that the state may punish such violations any way it sees fit *except* by interfering with interstate operations. It is rumored that an appeal will be taken to the highest court from this ruling.

Paving Laws Are No Bar to Bus Substitution

SOME of the street railway companies which have been laboring under the statutory obligation of keeping highways in repair between and around their tracks are getting rid of these paving obligations by the substitution of busses for service over rails.

Sometimes it is necessary to discontinue rail service entirely in order to escape this burden. Section 178 of the New York Railroad Law provides that a street railway company should keep up such paving maintenance "so long as it shall continue to use or maintain any of its tracks."

Even then there are some that would fasten paving costs on the transit companies. In a recent proceeding by the Westchester Street Transportation Company, Incorporated, for authority to substitute busses for street cars on Mamaroneck avenue in the village of Mamaroneck, New York, a trustee of the village, Mr. W. E. Lyon, opposed the company's proposal on the ground that it would escape its paving obligations. The New York Commission stated:

> "It seems that just as soon as busses are substituted with the right of removal as given in the franchise, the company will no longer use or maintain any of its tracks in any street and, therefore, the objection of Mr. Lyon falls. Regardless of the fact whether it falls or not and whether a municipality has the power to relieve a company of its paving obligation under § 178 of the Railroad law, the question is one to be determined by the courts and not by the Commission. If the court can find authority to compel the company to pave between the tracks which do not exist, it can so direct it but, in the meantime, the Commission has power to authorize the substitution of busses for cars under § 50-a."

Apparently, the Commission believes that Mr. Lyons is wrong in his contention that street railway companies will have to continue to help New York communities to pave their streets even after their tracks are torn up and busses are running. But, in any event, the paving law did not stop the granting of the application to substitute bus for rail service.

Jim Crow Busses for the Tar-Heels

THE North Carolina Commission is setting about enforcing a recent decision by the state supreme court requiring it to adopt reasonable regulations governing installation of separate accommodations for white and colored bus passengers.

The decision affirms a ruling made some months ago by a lower court to the effect that the Commission had authority to promulgate Jim Crow regulation for busses. The lower court stated that the Commission should have a reasonable time within which to work out the details of segregation and that, meantime, the bus operators are not required to transport negro passengers.

Judge Clarkson of the supreme court in sustaining this ruling stated:

> "This matter is left largely to the discretion of the Commission as to the manner and method. As to separate apartments in the busses or separate busses run for the accommodation of the white and negro races, this is a matter for the Commission to determine, taking into consideration the terminals of the lines, population, economic conditions."

This is going to be an interesting phase of regulation to watch. Will there be a separate compartment for colored gentry? If so, will it have a separate door? Possibly, as the opinion suggests, the colored bus will be separate. If so how will it be designated? There has been a suggestion that such busses should always be painted black. And still we wonder whether or not North Carolina is going to apply the Jim Crow regulation to aeroplanes and dirigibles.

Ohio Commission Cannot Permit Emergency Rate Increase

WHEN an emergency arises in public utility affairs so that an immediate change in rates becomes necessary, several of the Commissions follow the practice of authorizing emergency rate schedules to be followed while an investigation is under way to determine what rates should finally be established. Emergency rate increases were common during the war period, for example, when rapidly arising costs of operation left no doubt in the minds of the Commissions that existing rates were inadequate.

The Columbus Gas & Fuel Company, in seeking what it terms an "emergency rate," was recently met by a decision of the Ohio Commission that the Commission had no power to authorize the emergency rate increase. The company has been attempting for some time to agree with the city of Columbus on gas rates, following the expiration of its franchise. The city council first adopted an ordinance providing for rates ranging from 55 cents to 65 cents per thousand cubic feet, but this was soon repealed and afterwards a 48-cent rate ordinance was adopted by the council.

The company asserted that it had accepted the first franchise and brought suit in Federal court to uphold those rates but in this it was unsuccessful. Proceedings were started before the Commission to have higher rates approved, but relief was denied pending the outcome of court litigation.

The company then appealed to the Commission for the emergency rate, under a law allowing the Commission to alter rates temporarily with the consent of a public utility in order to "prevent injury to the business or interests of the public or any public utility." Another law, however, provided that this emergency rate feature did not apply to any rate prescribed by a municipality under proper authority. The Commission, therefore, was of the opinion that its powers were limited to those expressly granted by statute, and that the statute permitting the Commission to fix a temporary or emergency rate was not applicable in this situation.

The Commission said that it could, under the law, after hearing and with due regard to the value of the property used and useful, fix and determine the just and reasonable rates to be charged. The company could elect to charge the rate in effect immediately prior to the rate fixed by the ordinance, but beyond this, it was said, the Commission was without jurisdiction in the premises.

"THE first steamship to cross the Atlantic after Fulton's invention, brought over a new English book that satisfactorily proved navigation by steam a physical impossibility."

—KENNETH M. GOODE

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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TITLES

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v.

Railroad Commission of Kentucky et al.

(— F. (2d) —.)

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3. The fact that a Commission rate order will be enforced unless restrained by a court creates a justiciable stage in the proceeding, where a Federal district court has authority to take jurisdiction of a claim of confiscation notwithstanding the fact that a similar remedy is provided in state courts, p. 232.

Injunction — Jurisdiction of Federal court — Suspended Commission order.

4. The Federal district court has jurisdiction over a bill in equity by a utility to restrain a State Commission's rate order from confiscating the utility's property notwithstanding the fact that such order has been suspended for thirty days or more pending the institution of appellate proceedings, p. 233.

Franchises — Construction — Rate agreement — Resort to courts.

5. A clause in a franchise contract in which the parties agree that rates should be fixed in a manner provided by state law cannot be construed to be an undertaking on the part of the utility, in the nature of an arbitration agreement, to abide by the acts of the State Commission notwithstanding the violation of constitutional rights, especially where the right of either party to resort to the court has been specifically reserved, p. 234.

Injunction — Allegations of equity in bill — Penalties — Threatened suits.

6. Allegations of penalties to be incurred for failure to observe an alleged confiscatory rate order and the danger of numerous suits by customers for overcharges are sufficient to support equitable jurisdiction of a bill brought by a public utility to restrain the enforcement of such an order, p, 234.

Appeal and review — Jurisdiction of appellate court — Trial de novo.

7. A Federal court, in determining whether or not a rate order of a State Commission is confiscatory, must hear *de novo* all questions of law and fact, and the court is not confined to the testimony taken before the Commission, p. 234.

Injunction — Scope of restraining order — Franchise rate.

8. A utility seeking to enjoin the enforcement of a Commission's rate order is not also entitled to an injunction assisting it to violate a franchise agreement made by it as to the rates to be charged pending the judicial determination of a lawful rate, p. 235.

Injunction — Scope of restraint — Impounded funds.

9. A utility seeking to enjoin the enforcement of a Commission's rate order is not entitled to an injunction preventing the distribution of impounded funds where the Commission by its own order has suspended such activities pending the determination of the judicial review, p. 235.

Injunction — Scope of restraint — Filing of reports by utility.

10. A Commission was restrained from enforcing an order requiring a utility to file a report of all sums paid by customers under temporary rates where the rate order of the Commission had been restrained and no good purpose would be served by the filing of such a report, p. 235.

[January 28, 1930.]

SUIT *in equity by a natural gas utility for an injunction to restrain the enforcement of a rate order of the Kentucky Railroad Commission; temporary injunction granted.*

PER CURIAM: The plaintiff, a Kentucky corporation, is engaged in the sale and distribution of natural gas in the city of Lexington, Kentucky, under a franchise granted to it by the city on February 25, 1927, under the provisions of §§ 163 and 164 of the Constitution of Kentucky. While the franchise goes into much detail as to the duties and obligations of the plaintiff in distributing and selling natural gas to consumers, it does not fix the rate to be charged for such service. Lexington, under the law of Kentucky, is a city of the second class. Charters of cities of the second class confer upon such cities no power to regulate the rates to be charged by public utilities furnishing service to their inhabitants. Chapter 61 of the Acts of the General Assembly of 1920 (now §§ 201e-1-26, Kentucky Statutes, Carroll's 1922 Edition) confers that power upon the Railroad Commission of Kentucky.

Section 4 of the franchise deals with the question of the rates to be charged by the plaintiff under its franchise. That section reads as follows:

"Sec. 4. (A) The company shall have the right to charge, demand, collect, and receive for its gas service just and reasonable rates, charges, or compensation.

(B) The company shall, within two days after the effective date of the franchise contract promulgate in writing the rates, charges, and compensation which it may deem to be just and reasonable and which it pro-

poses to charge for its gas service, and shall on said day file a copy thereof with the mayor of the city of Lexington and shall also, on said day, file a copy thereof, and a copy of this ordinance with the Railroad Commission for the state of Kentucky.

(C) The Board hereby declares that any rate in excess of 40 cents per thousand cubic feet of gas would be in excess of a just and reasonable rate for such gas service, but this declaration shall not be binding on the company, nor shall anything herein contained ever restrict the city from contending for a lower, nor the company from contending for a higher nor the Railroad Commission of the State of Kentucky or other tribunal in the exercise of a lawful jurisdiction, nor any court in the exercise of its jurisdiction, from fixing a lower or higher rate than 40 cents per thousand cubic feet of gas.

(D) In the event the rates and charges promulgated and filed by the company as aforesaid, shall, in the opinion of the city, be in excess of just and reasonable rates and charges, then the city shall proceed before the Railroad Commission as provided in §§ 201e-1 to 201e-20 of the Kentucky Statutes, and in such proceeding the company shall assume the burden of proving that the rates and charges promulgated by it as aforesaid, are just and reasonable.

(E) Pending the final determination of such controversy and the fixing of just and reasonable rates and charges by said Railroad Commission and including any subsequent proceedings in court, the company shall have the right to charge, receive and collect as temporary rates and charges not to exceed 50 cents per thousand cubic feet of gas until the company is furnishing gas through a pipe line of sufficient capacity, or (should the purchaser hereof already have that 10-inch line named in § 23) then through two pipe lines, as provided in § 23 of this ordinance, and after it is furnishing gas through a pipe line of sufficient capacity, or (should the purchaser hereof already have that 10-inch line named in § 23), then through two pipe lines as aforesaid, not to exceed 60 cents per thousand cubic feet of gas; but provided that of the amount collected under such temporary rates the company shall under the direction and control of said Railroad Commission, or of the court, impound 10 cents per thousand cubic feet until the final fixation of just and reasonable rates and charges as aforesaid. Upon final determination of just and reasonable rates and charges as aforesaid, the sums so impounded together with all interest accumulations thereon shall be distributed under the order of said Commission, or court to the company, or to its several customers, or in part to each, as the final determination may direct. If the company during any part of the time prior to said final determination shall have collected sums including or other than those impounded, in excess of the rates and charges as finally determined, it shall then and thereupon repay said excess sums to the several customers who may have made such payments. The company shall give to each customer a receipt for the amount paid by him pending the final determination of said suit or proceeding. It shall also keep an accurate record of all sums

paid in by all and any of its customers under temporary rates and said records shall at all times be open to the city and to any customer as to his own contributions thereto; and the company on demand from the city, if so ordered by said Railroad Commission, or other tribunal, or court, shall file with said Railroad Commission, or court, where said proceeding or suit may be pending, a full and detailed statement of the amounts, times, and sums contributed by each customer to said funds. In addition to said temporary rates hereinabove provided for, the company shall have the right to charge 3 cents per thousand cubic feet, if the bill for service is not paid within ten days after said bill is mailed or delivered to the customer.

(F) The rates, charges, or compensation to be charged, demanded, and collected by the company as herein provided shall be the total rates, charges, and compensation charged, demanded and collected by the company and they shall not be increased by any other charge or device of any kind or description. The rates, charges, and compensation finally fixed and determined as provided in sub-section (D) hereof shall continue in effect until modified, altered or changed under and pursuant to the provisions of the franchise, as hereinafter provided."

The bill discloses that in compliance with § 4 (B) the plaintiff, within two days after the effective date of its franchise, promulgated in writing the rates proposed to be charged by it in rendering the service contemplated in the franchise, and that, as provided in § 4 (D) of the franchise, the city of Lexington and S. B. Featherstone, an interested citizen, for himself and other consumers, filed a complaint with the Railroad Commission, attacking the rates published by the plaintiff as excessive and extortionate, and asking that Commission to fix just and reasonable rates to be charged by the plaintiff. After notice to the plaintiff, a hearing was had, and on October 9, 1929, the Commissioner entered an order holding that the rates proposed to be charged by the plaintiff were unreasonable and extortionate and fixing 45 cents per thousand cubic feet, with an additional charge of 3 cents per thousand cubic feet for overdue bills, as the lawful rate to be charged by the plaintiff. The order further provides that the rate thus fixed should be effective from January 28, 1927, which date is declared by the order to be the effective date of the franchise.

The fourth and fifth paragraphs of the Commission's order are as follows:

"Fourth. That the Central Kentucky Natural Gas Company filed herein, at the inception of this hearing and controversy, a copy of its ordinance-franchise whereunder it is operating in the city of Lexington; that said franchise-contract made certain stipulations and provisions about the fixation of rates under it, and that the Commission had conformed its procedure as near as might be to the agreements of the said franchise-contract. That it is provided in § 4 (E) of said franchise-contract that pending the final determination of just and reasonable rates and charges by this Commission and including any subsequent proceedings in court, the defendant company shall have the

right to charge not to exceed 60 cents per thousand cubic feet for its gas; and that in order to afford either side hereto the right, if it be so desired, to proceed in the courts with respect to such fixation of rates, the application of the 45-cent rate hereby fixed is suspended for a period of thirty days from the entry of this order; that if within said 30-day period either side shall have filed such proceeding in court, then the application of the 45-cent rate hereby fixed shall be suspended until there be a final fixation in court of said rates, and subject to such modification, if any, of said rate as may be fixed by said court or courts; but that if no such proceeding be filed in said time, then the said 45-cent rate shall at once be put into force and effect.

That it be specifically recited and reserved, however, that no such suspension of the application of said 45-cent rate shall affect the fact that it, or it as modified by the courts, shall be effective from said 28th day of January, 1927.

Fifth. That as appears of record herein there have been impounded under the control and orders of the Commission, as provided in § 4 (E) of said franchise, considerable sums of money out of the collections made by defendant company as under the temporary rates by said section provided, which sums of money are to be distributed as under the orders of the Commission and as under the orders of the courts to which this controversy may be taken by the parties thereto. In consideration thereof it is ordered:

(a) That John H. Carter as special receiver do file within thirty days from this date a full report of all sums received by him, the dates of his such receipts, the expenses and allowances incident thereto, how said funds are now held and invested, and the net amount thereof in his hands as such receiver.

(b) That upon motion of plaintiff said defendant company is ordered, within thirty days from this date, to file with this Commissioner a full and detailed statement and exhibit of the names of each and all customers who have contributed to said funds, and the times and amounts of their several contributions thereto.

(c) That if there be instituted as within thirty days named in section four hereof, by either party, any suit to further try the rate controversy which is the subject of this proceeding, that the said impounded funds be retained in the custody and control of this Commission, and not distributed until said court proceedings have been fully determined; but that if said proceeding be not instituted in said thirty days, that this Commission will proceed to the distribution of said funds as may be proper in the premises.

That it be specifically reserved and recited, however, that nothing herein shall affect the right and obligation of the Commission to finally pay out said funds as under its fixation of rates herein made, or as same may be modified by the courts, and as is provided in said franchise-contract."

The bill alleges that the rates fixed are confiscatory, and that, therefore, the order deprives the plaintiff of its property without due process of law, and contains allegations appropriate to invoke the powers of a court of equity. The prayer of the bill is that the rates fixed by the Commission be decreed

to be confiscatory and in violation of the fourteenth Amendment to the Constitution of the United States; that the defendants be temporarily and permanently enjoined from enforcing of attempting to enforce such rates; that the Commission be temporarily and permanently enjoined from distributing the impounded funds referred to in the ordinance and in the order; that the Commission be enjoined from requiring the filing of the report directed to be filed in the fifth paragraph of the Commission's order, and that the Commission be enjoined from making reparation awards.

The case is now before us on motion for a temporary injunction, under § 266 of the Judicial Code. The defendants have filed answer, putting in issue all the material allegations of the bill and specifically attacking the jurisdiction of this court, and also attacking the bill because of want of equity therein.

[1] The defendants' contention, that this cause is not within the jurisdiction of a Federal court, is asserted from so many different angles, and the claims so overlap each other, that it is difficult to take hold of the real nub of their contention. Boiled down, it seems to be defendants' contention that in a rate controversy, where there is no diversity of citizenship and no other Federal question is made in the bill than the claim that the rate fixed by the rate-making body is confiscatory and deprives the plaintiff of his property without due process of law, the federal district courts are without jurisdiction over the controversy, if the state statute under which the rate was fixed permits a judicial review in the state courts on the question of confiscation or if the order, as in this case, suspends its operation pending judicial review, provided such review is sought within the time fixed by the order. It seems quite clear to us that the defendants have confused the question of jurisdiction with the question of the merits of the case. It is well settled that a complaint setting forth a substantial claim of a Federal right, either under a Federal statute or under the Federal Constitution, presents a case within the jurisdiction of the Federal court, if the matter has reached the justiciable stage and if the jurisdictional amount is involved; and this is true, no matter how the court may ultimately decide the claimed Federal right.

In the case of Binderup v. Pathe Exchange (1923) 263 U. S. 291, 305, 68 L. ed. 308, 44 Sup. Ct. Rep. 96, the Supreme Court of the United used this language in discussing the question of Federal jurisdiction based upon an asserted Federal right:

"Jurisdiction is the power to decide a justiciable controversy and includes questions of law as well as of fact. A complaint setting forth a substantial claim under a Federal statute presents a case within the jurisdiction of the court, as a Federal court; and this jurisdiction can not be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way upon either question is predicated upon the existence of jurisdiction, not upon the absence of it. Jurisdiction, as distinguished from merits, is wanting only where the

claim set forth in the complaint is so unsubstantial as to be frivolous, or, in other words, is plainly without color of merit."

See also: Columbus R. Power & Light Co. v. Columbus (1919) 249 U. S. 399, 63 L. ed. 669, P.U.R. 1919D, 239, 39 Sup. Ct. Rep. 349, 6 A.L.R. 1648; Weiland v. Pioneer Irrig. Co. (1922) 259 U. S. 498, 66 L. ed. 1027, 42 Sup. Ct. Rep. 568; Newburyport Water Co. v. Newburyport (1904) 193 U. S. 561, 48 L. ed. 795, 24 Sup. Ct. Rep. 553; Matters v. Ryan (1919) 249 U. S. 375, 63 L. ed. 654, 39 Sup. Ct. Rep. 315; Flanders v. Coleman (1919) 250 U. S. 223, 63 L. ed. 948, 39 Sup. Ct. Rep. 472; Lovell v. Newman & Son (1913) 227 U. S. 412, 57 L. ed. 577, 33 Sup. Ct. Rep. 375; Louie v. United States (1921) 254 U. S. 548, 65 L. ed. 399, 41 Sup. Ct. Rep. 188; Hart v. Keith Exchange (1923) 262 U. S. 271, 67 L. ed. 977, 43 Sup. Ct. Rep. 540; The Fair v. Kohler Die & Specialty Co. (1913) 228 U. S. 22, 57 L. ed. 716, 33 Sup. Ct. Rep. 410; Siler v. Louisville & N. R. Co. (1909) 213 U. S. 175, 53 L. ed. 753, 29 Sup. Ct. Rep. 451; Nathan v. Rock Springs Distilling Co. (1926) (6th Cir.) 10 F. (2d) 268.

Measured by the rule laid down and recognized in the foregoing, as well as in numerous other cases, the bill in this case is undoubtedly sufficient to invoke the jurisdiction of this court as a Federal court. We shall, therefore, examine the defendants' contention that this court is without jurisdiction as though it were a motion to dismiss the bill on the ground that as a matter of law there has been no denial of due process in this case, inasmuch as the question of confiscation can be examined in the state courts and as the order, by its terms, suspends its operation pending court review, provided same is taken within thirty days.

[2] Neither § 201e-1-26 of Kentucky Statutes, under which the Railroad Commission finds its authority for regulating the rates of the plaintiff, nor any other statute of Kentucky, provides for an appeal to the courts of the state by a utility company dissatisfied with the rates fixed by the Commission. The statutes of the state do not specifically provide for a proceeding in equity, in which the rates thus fixed may be attacked as being confiscatory, but that such right exists was recognized by the court of appeals of Kentucky in the case of Louisville & N. R. Co. v. Greenbrier Distillery Co. (1916) 170 Ky. 775, P.U.R.1916F, 508, 187 S. W. 296. On the other hand, the statute under which the Commission proceeded to fix plaintiff's rates does not attempt to deny the right of a utility company, in an appropriate proceeding, to have a court of competent jurisdiction try out the question of confiscation and exercise its own independent judgment as to the law and facts. Therefore, the statute under which the Railroad Commission proceeded does not itself deny due process of law, as was true in the case of Ohio Valley Water Co. v. Ben Avon (1920) 253 U. S. 287, 64 L. ed. 908, P.U.R.1920E, 814, 40 Sup. Ct. Rep. 527; Chicago, M. & St. P. R. Co. v. Minnesota (1890) 134 U. S. 418, 33 L. ed. 970, 10 Sup. Ct. Rep. 462, 702; Ohio Utilities Co. v. Public Utilities Commission (1925)

267 U. S. 359, 69 L. ed. 656, P.U.R. 1925C, 599, 45 Sup. Ct. Rep. 259; Missouri P. R. Co. v. Tucker (1913) 230 U. S. 340, 57 L. ed. 1507, 33 Sup. Ct. Rep. 961; Oklahoma Operating Co. v. Love (1920) 252 U. S. 331, 64 L. ed. 596, 40 Sup. Ct. Rep. 338.

[3] The fact, however, that a state rate-fixing statute does not by its terms deny due process of law, by no means results in closing the door to a judicial inquiry as to whether or not a rate fixed by a rate-making body under the statute amounts to confiscation and denial of due process under the Fourteenth Amendment. The statute may be valid when measured by the Fourteenth Amendment, and yet the action of the rate-making body in fixing the rate complained of may be invalid under the Amendment. In such a case the moment the legislative act of fixing the rate has been completed and the rate-making body has the power and is under the duty to enforce the rate, unless restrained by court proceedings, the justiciable state is reached, and irrespective of diversity of citizenship, the complaining utility, under § 24 of the Judicial Code, may seek the protection of a Federal court, even though the state law affords a like procedure in the state courts. In either jurisdiction exactly the same question would be involved, viz.: Is the rate so low as to be confiscatory, thereby resulting in depriving the plaintiff of his property without due process of law? If the complaining party pursues the state remedy and the state court, under the state law, is authorized to and does exercise its independent judgment on both the law and facts as to the question of confiscation and decides against the plaintiff, that is the end of the matter and the case is *res judicata,* unless on error to the Supreme Court it should be determined that the state court acted arbitrarily or proceeded upon some fundamental error of law. But, as the question involved is a Federal one, the plaintiff could have pursued his remedy in the first instance in the Federal court. The state court procedure provided by the state law is simply an alternative elective remedy. Railroad & Warehouse Commission v. Duluth Street R. Co. (1927) 273 U. S. 625, 71 L. ed. 807, P.U.R. 1927B, 712, 47 Sup. Ct. Rep. 489; Reagan v. Farmers Loan & Trust Co. (1894) 154 U. S. 362, 38 L. ed. 1014, 14 Sup. Ct. Rep. 1047, 4 Inters. Com. Rep. 560; Pacific Teleph. & Teleg. Co. v. Kuykendall (1924) 265 U. S. 196, 68 L. ed. 975, P.U.R.1924D, 781, 44 Sup. Ct. Rep. 553; Bacon v. Rutland R. Co. (1914) 232 U. S. 134, 58 L. ed. 538, 34 Sup. Ct. Rep. 283; Oklahoma Nat. Gas Co. v. Russell (1923) 261 U. S. 290, 67 L. ed. 659, P.U.R. 1923C, 701, 43 Sup. Ct. Rep. 353; Prendergast v. New York Teleph. Co. (1923) 262 U. S. 43, 67 L. ed. 853, P.U.R.1923C, 719, 43 Sup. Ct. Rep. 466; Detroit & Mackinac R. Co. v. Michigan R. Commission (1913) 203 Fed. 864; Detroit & Mackinac R. Co. v. Michigan R. Commission (1914) 235 U. S. 402, 59 L. ed. 288, 35 Sup. Ct. Rep. 126; Monroe Gas Light & Fuel Co. v. Michigan Pub. Utilities Commission (1923) 292 Fed. 139, P.U.R.1923E, 661; Van Wert Gaslight Co. v. Public Utilities Commission (1924) 299 Fed. 670; Union Light, Heat & P. Co. v. Railroad

Commission (1926) 17 F. (2d) 143, P.U.R.1927C, 489.

The defendants have entirely overlooked the fact that the Supreme Court cases referred to in Judge Cochran's opinion in the case of Central Kentucky Nat. Gas Co. v. Mt. Sterling (1928) 32 F. (2d) 338, P.U.R.1929E, 446 [Bulletin No. 3229], and other cases of a similar character, were either dealing with the question of the constitutionality of statutes when measured by the Fourteenth Amendment, or with the question of whether or not a particular state court procedure which had been followed by the complaining party had denied due process, and the the court in that case apparently fell into the same error. None of these cases is authority in support of defendants' contention that when the state law permits a judicial review of a rate fixed by a rate-making body, that fact, as a matter of law, is such due process as to deny a Federal court the power to hear and determine the question of confiscation in a suit brought in such court upon completion of the rate-making act.

[4] Defendants point to the fourth paragraph of the Railroad Commission's order in support of their contention that the order fixing the 45-cent rate does not amount to a taking of plaintiff's property without due process of law. This contention is based on the provision in that paragraph of the order suspending the 45-cent rate for a period of thirty days after the entry of the order, and, if a proceeding is instituted in court within that time, for such additional time as the matter is pending in court. It is argued that as the operation of the order is thus suspended pending a judicial determination of the question of confiscation, there has been and can be no taking without due process. The trouble with this contention is that the defendants entirely ignore the plight the plaintiff found itself in upon entry of the order complained of. Plaintiff was then faced with the necessity of making a decision as to whether it should or should not resist the order in a judicial proceeding. If it did not resist, then by the terms of the order it became operative at the end of thirty days. So from the very date of its entry the Railroad Commission was under the duty of enforcing the order at the end of thirty days, if court proceedings had not been instituted; and by the express language of the order itself, the Commission was threatening so to do.

It must not be forgotten that the prohibitions contained in the Fourteenth Amendment apply to each of the three branches of the state government. As pointed out in the case of Chicago, B. & Q. R. Co. v. Chicago (1897) 166 U. S. 226, 233, 41 L. ed. 979, 17 Sup. Ct. Rep. 581:

"The prohibitions of the amendment refer to all the instrumentalities of the state—to its legislative, executive and judicial authorities, and therefore whoever by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the state violates the constitutional inhibition; and as he acts in the name and for the state and is clothed with the state's power, his act is that of the state."

Therefore, if the rate fixed by the

Commission is confiscatory, and its observance had been enforced by the Commission, such enforcement would have resulted in depriving the plaintiff of its property without due process of law, irrespective of the fact that the plaintiff might have appealed to a state court for judicial determination of the question of confiscation. If, then, its enforcement by the Railroad Commission would deprive the plaintiff of its property without due process of law, undoubtedly such threatened enforcement justified a resort to a court of equity to prevent such confiscation, provided the other necessary grounds for equitable jurisdiction exist. Such a suit would present solely a controversy arising under the Constitution of the United States, of which district courts are given jurisdiction under § 24 of the Judicial Code.

[5] It is rather hesitatingly suggested by the defendants that the action of the Railroad Commission complained of can not be considered as a denial by the state of due process, for the reason that the Railroad Commission, by virtue of the agreement set forth in § 4 of the franchise ordinance, acted as arbitrators chosen by the parties to fix the rate, and not as a state agency vested by law with the power to fix plaintiff's rates. A most superficial reading of the franchise, however, discloses the fallacy of this contention. The provisions found in § 4 of the ordinance are the very antithesis of an arbitration agreement. Instead of indicating an intention to be bound by the action of the Railroad Commission, as would have been the case in an arbitration agreement, there is specifically reserved to each party the right to resort to the courts to test the legality of the rate fixed. At most, the franchise simply expresses the agreement of the parties that the rate to be charged may be fixed and determined in the manner provided by state law. Such an agreement can not be twisted into an undertaking on the part of the plaintiff to abide by the action of the Commission, if it conceives its Federal constitutional rights to be violated by the order, nor into an agreement to seek redress for such wrong, if any, in the state courts. See Railroad & Warehouse Commission v. Duluth Street R. Co. *supra.*

We must hold, therefore, that this court has jurisdiction of the controversy, and that the mere fact that the state courts are open to the plaintiff to have judicially determined the question of confiscation does not prevent the order of the Railroad Commission and its threatened enforcement from being violative of the Fourteenth Amendment, if, in fact, the rate fixed is confiscatory.

[6] Defendants contend, perhaps not strenuously, that there is no equity in the bill. The allegations therein as to the penalties which might have been inflicted, had the plaintiff disregarded the order fixing the rates and taken no steps to enjoin its enforcement, and the danger of numerous suits by customers for overcharges had no such steps been taken, are sufficient to support equitable jurisdiction.

[7] In view of the conclusions herein announced, it becomes our duty to hear and determine *de novo* the questions of fact and law as to whether or not the rate complained of is

confiscatory. In such a hearing we are not confined to the testimony heard before the Commission, as we probably would be had the Commission's order been attacked solely on the ground that it was arbitrary and capricious. Of course, we are not to be understood as holding that the parties may not, by agreement, try the case before us upon the same evidence heard by the Commission. The conclusions herein announced, however, do not require that the temporary injunction sought shall be granted to the full extent asked by the plaintiff.

[8, 9] By the express provisions of the franchise ordinance the plaintiff agreed to the rates which it would charge during the pendency of any suit brought to judicially determine the lawfulness of the rate fixed by the Commission, and the Commission's order recognizes and respects that agreement. The plaintiff is in no position, therefore, to ask the assistance of this court in violating such agreement. Neither is the plaintiff entitled to a temporary injunction to prevent the enforcement of the 45-cent rate, nor to prevent distribution of the impounded funds, nor to prevent reparation awards by the Commission. The order in terms suspends all of these matters so long as the question of the rate is pending in court.

[10] Section 4 of the franchise ordinance, after providing for the charges which may be made pending investigation by the Railroad Commission and any subsequent proceeding in court, and for the impounding of ten cents per thousand cubic feet of such charge, further provides:

"It shall also keep an accurate record of all sums paid in by all and any of its customers under temporary rates and said records shall at all times be open to the city and to any customer as to his own contributions thereto; and the company, on demand from the city, if so ordered by said Railroad Commission or other tribunal, or court, shall file with said Railroad Commission or court where said proceedings or suit may be pending, a full and detailed statement of the amounts, times and sums contributed by each customer to said funds."

By virtue of this provision the Railroad Commission in its order directed the plaintiff, within thirty days, to file with the Commission a full and detailed statement and exhibit of the names of each and all customers who have contributed to said funds, and the times and amounts of their several contributions thereto. Before the expiration of the 30-day period this suit was filed, and by the terms of the franchise ordinance such a report, if required to be filed, should be filed with this court, and not with the Railroad Commission. No good purpose could be served at this time in requiring the plaintiff to go to the expense of filing such a report with the Railroad Commission. If, ultimately, it should be determined that the rate fixed is confiscatory, the plaintiff would have been put to the expense of compiling and filing such a report when there was no necessity therefor. For this reason a temporary injunction may issue to the extent of prohibiting the Commission from requiring the filing of such report.

An order conforming to the views herein expressed may be prepared by counsel and submitted for entry.

NEW YORK DEPARTMENT OF SERVICE
STATE DIVISION, PUBLIC SERVICE COMMISSION

Richard Panzer

v.

Brooklyn Edison Company, Incorporated

[Case No. 5889.]

Payment — Discontinuance to enforce — Nonpayment by a receiver.

1. An electric company was held to be justified in discontinuing and refusing to renew service until it received a new application for service signed by a newly-appointed receiver of an apartment house with a deposit to secure future payments, where the company had experienced difficulty in collecting past accounts from such premises, p. 239.

Payment — Discontinuance to enforce — Unauthorized connection.

2. An electric company was held to be justified in refusing to renew service to a tenant of an apartment house who had secured service, after his own meter had been disconnected, by connecting to another meter, until the latter should pay not only his original bill, but an amount for the additional service so consumed together with a deposit to secure future payment, p. 239.

Service — Access to meters — Electricity.

3. An electric company is entitled at all times, through its agents or employees, to safe and unobstructed access to all meters, fittings, wires, and other connections, p. 239.

[January 9, 1930.]

COMPLAINT *by an electric consumer against the discontinuance of service; dismissed.*

APPEARANCES: Richard Panzer, Brooklyn, appearing for himself as the complainant; Monroe & Byrne (by Mr. Monroe), New York city, appearing for the Brooklyn Edison Company, Incorporated.

VAN NAMEE, Commissioner:

Case History

Forty-five Bay 28th street, Brooklyn, consists of a four story, 24-family apartment house—six apartments on each floor with a janitor's apartment in the basement. The premises are owned by Leer Building & Construction Company of which Hugo J. Panzer is president, and the complainant, Richard Panzer, is vice president, and were acquired by said corporation in March, 1928, subject to several mortgages.

In November, 1928, Vimad Realty Corporation, alleged owner of a $45,000 interest in a first mortgage of $70,000 began an action to foreclose said mortgage, in which action on

November 28, 1928, Charles L. Bowen was appointed receiver of the rents and profits of the premises. The order appointing the receiver (Ex2) does not authorize the receiver to appoint an agent but the complainant, Richard Panzer, asserts that he is the agent for the receiver, under an oral appointment, and is in custody of said premises for the receiver. Electricity is supplied to the premises by Brooklyn Edison Company and gas is supplied by Kings County Lighting Company. Prior to October 7, 1929, there were 26 electric meters in the premises—one for each apartment, one for the hall lights, and one for the basement apartment.

About September 1, 1929, the complainant neglected to pay a bill amounting to $4.27 for electricity consumed from June 18, 1929 to August 19, 1929 in Apartment 3–C, apparently occupied by Hugo J. Panzer and wife, father and mother of Richard Panzer, though the record customer on the company's book has been Richard Panzer. After bills, collectors, and a disconnect notice had been sent to Apartment 3–C, without results, the service was disconnected on September 16, 1929.

On October 7, 1929, there was due for electricity supplied for hall lights through meter 2BX389953—$6.23 and $10.40 due for electricity recorded on the meter for apartment 2–D (Meter Number 2BX413659) and on that day both meters were removed by the company.

On October 9th, Richard Panzer, the complainant obtained an order to show cause why said company and Edward A. Bailey, treasurer of said company, should not be adjudged in contempt of court and restrained from interfering with the premises.

This order was served by Richard Panzer himself on Edward A. Bailey, treasurer of the Brooklyn Edison Company and on other officers for the company, and the manner of such service tended to greatly aggravate the situation then existing in the whole matter. October 14th, Justice Dike vacated the order.

At about this time, Richard Panzer applied to the Public Service Commission for an adjustment of his differences with the company and our complaint bureau at 120 Broadway, New York city, took the matter up with the company. They were informed the meters would be restored upon the payment of the amounts due which, including the October readings, totaled $22.30. This Mr. Panzer was unwilling to do because of various claims of payments or tender of payment and of other matters which are explained more in detail later. I had Mr. Panzer and Mr. Monroe representing the company at my office and spent several hours attempting to obtain an adjustment. Mr. Monroe asked a deposit on each of the three meters in addition to payment of the bills to date. After several more interviews with both parties, nothing remained but to make a formal complaint of the matter, which was done. A case No. 5889 was given to it and the hearings were held November 20th—December 13th—18th and 20th,—Three full days from 10.30 A. M. to 5.30 P. M. and a short hearing on December 13th in which 894 pages of testimony were taken and 20 exhibits offered in evidence.

NEW YORK DEPARTMENT OF SERVICE
STATE DIVISION, PUBLIC SERVICE COMMISSION

Richard Panzer

v.

Brooklyn Edison Company, Incorporated

[Case No. 5889.]

Payment — Discontinuance to enforce — Nonpayment by a receiver.

1. An electric company was held to be justified in discontinuing and refusing to renew service until it received a new application for service signed by a newly-appointed receiver of an apartment house with a deposit to secure future payments, where the company had experienced difficulty in collecting past accounts from such premises, p. 239.

Payment — Discontinuance to enforce — Unauthorized connection.

2. An electric company was held to be justified in refusing to renew service to a tenant of an apartment house who had secured service, after his own meter had been disconnected, by connecting to another meter, until the latter should pay not only his original bill, but an amount for the additional service so consumed together with a deposit to secure future payment, p. 239.

Service — Access to meters — Electricity.

3. An electric company is entitled at all times, through its agents or employees, to safe and unobstructed access to all meters, fittings, wires, and other connections, p. 239.

[January 9, 1930.]

COMPLAINT *by an electric consumer against the discontinuance of service; dismissed.*

APPEARANCES: Richard Panzer, Brooklyn, appearing for himself as the complainant; Monroe & Byrne (by Mr. Monroe), New York city, appearing for the Brooklyn Edison Company, Incorporated.

VAN NAMEE, Commissioner:

Case History

Forty-five Bay 28th street, Brooklyn, consists of a four story, 24-family apartment house—six apartments on each floor with a janitor's apartment in the basement. The premises are owned by Leer Building & Construction Company of which Hugo J. Panzer is president, and the complainant, Richard Panzer, is vice president, and were acquired by said corporation in March, 1928, subject to several mortgages.

In November, 1928, Vimad Realty Corporation, alleged owner of a $45,000 interest in a first mortgage of $70,000 began an action to foreclose said mortgage, in which action on

November 28, 1928, Charles L. Bowen was appointed receiver of the rents and profits of the premises. The order appointing the receiver (Ex2) does not authorize the receiver to appoint an agent but the complainant, Richard Panzer, asserts that he is the agent for the receiver, under an oral appointment, and is in custody of said premises for the receiver. Electricity is supplied to the premises by Brooklyn Edison Company and gas is supplied by Kings County Lighting Company. Prior to October 7, 1929, there were 26 electric meters in the premises—one for each apartment, one for the hall lights, and one for the basement apartment.

About September 1, 1929, the complainant neglected to pay a bill amounting to $4.27 for electricity consumed from June 18, 1929 to August 19, 1929 in Apartment 3–C, apparently occupied by Hugo J. Panzer and wife, father and mother of Richard Panzer, though the record customer on the company's book has been Richard Panzer. After bills, collectors, and a disconnect notice had been sent to Apartment 3–C, without results, the service was disconnected on September 16, 1929.

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This order was served by Richard Panzer himself on Edward A. Bailey, treasurer of the Brooklyn Edison Company and on other officers for the company, and the manner of such service tended to greatly aggravate the situation then existing in the whole matter. October 14th, Justice Dike vacated the order.

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The receiver, Charles L. Bowen, did not appear at any of the hearings although his presence was requested by the hearing Commissioner and was frequently promised by the complainant Panzer. The only witnesses produced or called by the complainant were himself, his personal servant, Stanley M. Seixas, the janitor's wife, Mrs. Frost, and her daughter, Mrs. Devilin. In addition, Mr. Panzer called or recalled for examination several employees of the Brooklyn Edison Company. The witnesses called or produced by the respondent were Mr. Bailey, treasurer of respondent, and nineteen employees of respondent, three other witnesses, being two former occupants of the apartment house and Mr. Davis, adjuster for Kings County Lighting Company. Two gas inspectors and three electric inspectors, employees of the Public Service Commission who made a thorough examination of the meters, piping, and wiring of the gas and electricity on the premises at the direction of the Hearing Commissioner on December 19, 1929, were also produced as witnesses.

The complainant contends:

1. That the respondent, Brooklyn Edison Company, Inc., removed two meters (a) for the halls and (b) for Department 2-D on October 7, 1929, and has not restored them. This the company admits is the fact.

2. That bills for service have not been properly rendered—some have been paid and payment tendered for others.

3. That respondent's employees who called at the premises have been discourteous.

The company contends:

1. That there are certain amounts due and owing from the complainant both for electricity recorded on various meters, some of which have been removed from the premises for nonpayment of bills, and from electricity used in certain halls and apartments which were not recorded on any meter but which electricity was obtained and used with the knowledge and consent of the complainant.

2. That in view of the history of its relations with this complainant and of the difficulty which it has in the past experienced in its collections of bills for the electricity recorded on the meters in question, the requirement of a reasonable deposit on each meter, is just and should be enforced.

3. That the receiver of the premises in question and his agent, the complainant herein, allow the duly accredited employee of the company entrance at any reasonable time to the premises for the purpose of reading and inspecting meters therein.

To set forth herein a resume of the evidence contained in the 900 pages of testimony and the 20 exhibits introduced would unduly extend this memorandum. The complainant, although given ample notice of the first hearing, appeared without witnesses and was anything but frank and open in his own testimony, even refusing to answer several questions. Many statements made by him are inconsistent and all the witnesses finally produced by him were persons either in his own employ or working on the premises which he controls as agent of the receiver. His manner during the hearings was abusive and bullying and a reading of the testimony will

show that much of his examination and cross-examination was improper. Every latitude was allowed, however, by the hearing Commissioner in an endeavor to obtain the truth in a maze of contradictory statements.

Naturally, the witnesses for the company, consisting of some twenty employees, were interested in sustaining the practices of the company and in upholding the contention that as applied to the case in question, such practices were just and reasonable.

The only disinterested witnesses were the former tenants who testified as to the residence of Panzer in apartment 2-D, which fact he denied and the employees of the Commission who testified as to the wiring. These gave testimony which was detrimental to the contention of the complainant. As bearing on the reasonableness of the company's demand for a deposit, evidence was introduced (Ex. 10) showing that Richard Panzer, the complainant is a judgment debtor on an unsatisfied judgment for $755.45, docketed March 1, 1927, in Kings county clerk's office in favor of Lafayette Maintenance Corporation.

Having heard all the evidence as given and having carefully read the stenographer's minutes taken at the hearings, and examined and studied the exhibits offered and also having read the brief filed by Monroe and and Byrne, attorneys for the company, no brief having been filed by the complainant by January 6th when this is written, I have arrived at the following conclusions of fact:

Conclusions of Facts

[1–3] 1. Leer Building & Construction Company, Incorporated, is the owner of the premises, 45 Bay 28th street, Brooklyn, New York, consisting of a 4-story, 24-family apartment house. Hugo J. Panzer is president and H. Richard Panzer is vice president of said Leer Building & Construction Company, Incorporated. Hugo J. Panzer occupies apartment 3-C, and H. Richard Panzer occupies apartment 2-D in said apartment house. The other 22 apartments, and also the basement apartment, are each occupied by one or more persons or families. Charles L. Bowen is, and since November 28, 1928 has been, receiver of the rents, issues, and profits of said apartment house, in an action pending in the supreme court, Kings county, to foreclose a mortgage affecting the same, entitled *Vimad Realty Corporation against Antoinette Altieri Realty Co., Inc., Leer Building & Construction Company, Inc., et al.*

2. Brooklyn Edison Company, Incorporated, respondent herein supplies, and since prior to March, 1928, has supplied, electricity to the occupants of said apartment house, and such occupants are dependent upon said company for the supply of electricity for lighting the several apartments therein, and the halls thereof. In supplying electricity to and in said apartment house, Brooklyn Edison Company, Incorporated, has in all respects complied with the requirements of the Public Service Commission Law and the Transportation Corporations Law, and the service so furnished, has been proper, safe, and adequate, and in all respects just and reasonable. The service so supplied has been promptly and properly billed, so far as proper billing addresses and instruc-

tions have been given to respondent, so far as the evidence herein shows, and the collectors, agents, and other employees of respondent who have visited said apartment house, have not been discourteous, rude, or offensive, and have not interfered with said apartment house, the custody thereof, or with personal property, not belonging to respondent, therein contained.

3. The first notice or knowledge which Brooklyn Edison Company, Incorporated, had of the appointment of Charles L. Bowen as receiver, as aforesaid, was on or about October 9, 1929. Respondent has not waived a deposit by said receiver, but has demanded a deposit of $10 from him under and pursuant to § 13, Transportation Corporations Law, for meter No. originally 2 BX389953 lighting the hall of such apartment building. The amount so demanded is just, fair, and reasonable. The respondent has also requested said receiver to sign a written application for service, and has requested said receiver to give its agents and employees access to said premises, as contemplated by § 14, Transportation Corporations Law. These requests were fair and reasonable, and compliance therewith is necessary to enable respondent to supply electricity to said receiver and to and in said apartment house and to the occupants thereof so that the service can be properly billed and the charges therefor properly collected. Said receiver has neglected and refused, and continues to neglect and refuse, to make said deposit and to comply with each of the aforesaid requests.

4. H. Richard Panzer, the complainant herein, has occupied apartment 2-D in said apartment house as a place of residence, since March 26, 1928, and between March 26, 1928 and October 7, 1929, said H. Richard Panzer used and consumed electricity in said apartment largely in excess of the quantity registered on the meter for said apartment 2-D, and said Panzer has paid for no electricity so used or consumed, whether the same was registered or not. At the last reading on August 19, 1929, there was due on such meter for electricity consumed since January 17, 1929, the sum of $10.40 and it is found that such amount is due from said Richard Panzer for such consumption, together with the sum set forth as due from the janitor's apartment meter since October 7, 1929, the evidence showing that since such date the current consumed in Apartment 2-D was registered under such meter. A reasonable deposit may be demanded from said Richard Panzer before the meter serving apartment 2-D is restored.

5. On October 7, 1929, bills for the service rendered by Brooklyn Edison Company, Incorporated, in supplying electricity for lighting the halls in said apartment house, had not been paid since June 18, 1929, and there was then due and owing respondent therefor the sum of $6.23 which amount was not paid respondent until November 12, 1929.

6. On October 7, 1929, the meters for the halls and for apartment 2-D in said apartment house, were removed by Brooklyn Edison Company, Incorporated, for non-payment of the remuneration due said company for service supplied through said

meters. The removal of said meters was justified. The same day the said meters were removed, electric service to said halls and to said apartment 2-D was connected by some person or persons unknown to the meter for the basement apartment in said apartment house, which said basement apartment was then occupied by Mrs. E. Frost, janitress of said apartment house, who testified that she is unable to pay for the electricity recorded on said meter. Electricity has been used in said halls, in said apartment 2-D, and in said basement apartment, since October 7, 1929, all of which has been recorded without distinction on said basement apartment meter. Said basement apartment meter was read August 19, 1929, September 18, 1929, October 19, 1929, November 19, 1929, and December 19, 1929, and the correct charge for the electricity recorded on said meter from August 19, 1929 to November 19, 1929 was $9.31. The consumption recorded on the meter from November 19, 1929, to December 19, 1929, was 139 kilowatt hours, for which the charge at 7 cents per kilowatt hour is $9.66. There is consequently due the sum of $18.97, no part of which has been paid, and which sum is now due and payable from said H. Richard Panzer to said Brooklyn Edison Company, Incorporated. A reasonable deposit may be demanded from said receiver before the meter serving the basement apartment is restored.

7. Since on or about September 16, 1929, H. Richard Panzer, purporting to act for Charles L. Bowen as receiver, as aforesaid, has prevented and hindered the agents and employees of said Brooklyn Edison Company, Incorporated, from entering the said premises, 45 Bay 28th street, for the purpose of inspecting and examining the meters, fittings, wires, and connections used for supplying electricity thereto, and for the purpose of ascertaining the quantity of electricity supplied, and has excluded said agents and employees therefrom except on one or two occasions, and except that meter readers have been admitted after a second application. The aforesaid acts of said H. Richard Panzer were accompanied by threats of personal injury made by said Panzer to said agents and employees, and were intended by said Panzer to delay, hinder, and obstruct said Brooklyn Edison Company, Incorporated, in supplying electricity to and in said apartment house, and in ascertaining the condition of the meters, fittings, wires and connections used therein, and in collecting its charges for service supplied to and in said apartment house.

8. I further find that Brooklyn Edison Company, Incorporated, is entitled to a written application or contract to be signed by said Charles L. Bowen as receiver, for electricity supplied and to be supplied, during the time he is receiver of the rents, issues, and profits of said apartment house, and is entitled to a deposit of the sum of $10 from said receiver under and pursuant to the terms of § 13, Transportation Corporations Law, and that said company, through its agents and employees, is entitled at all reasonable times, to safe and unobstructed access to the meters, fittings, wires, and connections in the cellar of said apartment house.

9. I further find that on December

19, 1929, there was due from H. Richard Panzer to said Brooklyn Edison Company, Incorporated, for electricity supplied to said H. Richard Panzer at 45 Bay 28th street, or for electricity supplied to him and by him caused to be so recorded as to be indistinguishable from the electricity supplied for hall lights and for the basement apartment, the sum of $29.17, no part of which has been paid; said sum being the total found to be due from said Richard Panzer under findings 4 and 6 hereof. I further find that said Brooklyn Edison Company, Incorporated, is entitled to a written application or contract for electricity to be supplied to said H. Richard Panzer, and to a deposit to be made by said Panzer, under and pursuant to § 13, Transportation Corporations Law, in the sum of $10, and that said H. Richard Panzer is not entitled to electric service from Brooklyn Edison Company, Incorporated, until said sum is paid, said application or contract is signed, and said deposit is made.

10. It follows, therefore, that an order should be entered dismissing the complaint and setting forth the terms under which the disputed service shall be restored to the premises in question.

An order to such effect is hereto attached.

MICHIGAN PUBLIC UTILITIES COMMISSION

Re Kohler Aviation Corporation

[D-2459.]

Security issues — Price of no-par stock — Book value.

1. The Commission refused to authorize the sale of an additional block of no-par value stock at $5 per share when, by reason of the sale price of earlier issues, the present book value was $2.81 per share, p. 243.

Security issues — Commission jurisdiction — Blue Sky Law policy.

2. Notwithstanding the fact that a state Blue Sky Law, by its own terms, governs only the action of the state securities commission, it is within the jurisdiction of the Public Utilities Commission to adopt such statutory provisions as its own policy with respect to granting authority for the issuance of public utility securities, p. 243.

[January 6, 1930.]

APPLICATION *of an air utility for permission to issue securities; denied.*

By CUMMINS, Commissioner: In this matter an examination of the file discloses that at the time of the original order authorizing the filing of the

articles of association and the approval of its outstanding securities there had been issued 25,000 shares of no-par stock at a price of $75,000—1,666⅔ shares at a price of $1,666.67 and 2,000 shares as partial payment for an airplane having a stated value of $27,000—$17,000 of which was paid in cash and the balance by the 2,000 shares of stock.

It will appear then that the company had outstanding 28,666⅔ shares, for which it had received $86,666.67. Assuming that these assets had been kept intact at the time of the order aforesaid, these shares of stock then had a book value of $3.02.

October 31st, an application was made for authority to sell an additional 4,000 shares for a consideration of $20,000. In this application it is stated that the then outstanding capital stock consisted of 36,000 shares of no-par value, for which the company had received $110,000; and it is stated that this appears by the articles of association. However, it did not so appear in the articles of association, but the capital there stated was as hereinbefore stated. It is also stated in this new application that on August 1 and September 28, 1929, respectively, additional issues of 1,666⅔ shares each were made for a total consideration of $3,333.33 or $1 per share. These last issues were not authorized by this Commission.

[1, 2] By reason of these later issues the total outstanding stock is now 32,000 shares of no-par value, for which the company has received $90,000, giving a present book value of $2.81 per share. If the issue now applied for is approved and the stock sold at the price named, the outstanding capitalization will then be as stated in this application to appear by the articles.

I am of the opinion that this Commission ought not to authorize the sale of this additional block of 4,000 shares of no-par stock at $5 per share; and I am of the opinion that the whole financial structure is decidedly objectionable. The "Blue Sky Law of Michigan" contains the following provision—

Section 12. . . . "The Commission shall in no case authorize the sale of any stock at a price in excess of the par value thereof or of any non-par value stock at a price in excess of the book value thereof, unless the same can show net earnings of not less than 5 per cent for a period of at least one year immediately preceding the application."

Of course, I understand that the "Blue Sky Law" governs only the action of the securities commission, but I further understand that it would be within our jurisdiction to adopt, as a policy, statutory provisions which are made mandatory upon the securities commission; and it seems to me that this mandatory provision is a most wise and beneficial one.

Suppose a concern issues today 1,000 shares of no-par stock at $1 and six months later, without any showing as to earning capacity or increased value of its assets, it sells 1,000 shares for Ten Dollars ($10) per share, it will then have outstanding 2,000 shares with assets of $11,000. The original 1,000 shares then will have a book value of $5,500, and the 1,000 shares last issued at a price of $10,000 will have a book value of only $5,500.

I understand this sort of thing to

be common practice in some places; but if there is to be any such thing as regulation of the issuance of securities, this ought not to be tolerated for a moment. I do not think we ought to permit the sale of non-par stock at an increased price over the original issue, except after a showing either of appreciation in the value of its assets or a well demonstrated earning capacity justifying the increased issue. Surely no one would attempt to justify selling the same kind of stock at different prices to different people at the same time. But there can be no difference in principle between selling at different prices at the same time and at different times, if there has been no change in the status of the company in the meantime.

PENNSYLVANIA PUBLIC SERVICE COMMISSION

Pennsylvania Railroad Company et al.

v.

Colonial Stages et al.

[Complaint Docket No. 8115.]

Interstate commerce — Subterfuge to evade local regulation.

1. The use of tickets by a motor utility alleging on their face a destination out of the state does not affect the status of the carrier transporting passengers where such transportation is actually intrastate in nature, p. 245.

Interstate commerce — Abuse of interstate motor service — Acts of agents.

2. An interstate motor carrier alleging attempts to prevent abuses of its service for intrastate purposes was held responsible for the printed advertisements of merchants not under its control but selling its tickets on a commission basis in attracting intrastate passengers, where the utility had knowledge of the fact that such passengers, purporting to travel on interstate tickets, actually left the busses at bus changing points within the state, p. 246.

Automobiles — Violations of laws.

3. An interstate motor carrier having knowledge that many passengers were using its service for intrastate purposes, notwithstanding alleged attempts to prevent such abuses, was advised to correct such abuses in order to avoid further penalty of the law, p. 246.

[January 6, 1930.]

COMPLAINT *against an interstate motor carrier for furnishing intrastate transportation; sustained.*

By the COMMISSION: The complaints of the Pennsylvania Railroad Company and Pennsylvania General Transit Company in this proceeding allege that respondents are engaged in the carriage of passengers in intrastate commerce between Philadelphia and Pittsburgh and intermediate points in Pennsylvania. The respondents named, together also with Interstate Transit, Incorporated, which it was agreed was operating the respondents' lines and might be regarded as a party respondent, contend that they are in good faith operating in interstate commerce only and that any transportation intrastate shown is de minimis and the result of their inability to control employees and passengers. Circular instructions sent to respondents' employees and agents appear in evidence, and also placards warning against the sale of tickets for the transportation of passengers between points within the state.

Respondents' route between Philadelphia and Pittsburgh is *via* the Lincoln Highway, although up to a time shortly before hearing in this proceeding some of the respondents' bosses took an alternate route between McConnellsburg, Pennsylvania, and Gettysburg, Pennsylvania, *via* Emmitsburg, Maryland. The record indicates that respondents' transfer point for their Baltimore and Washington passengers is at Gettysburg. It appears that respondents also operate between Pittsburgh and Easton, Pennsylvania, over the William Penn Highway.

The complainants' evidence of intrastate operation is based upon round trips made by two employees between McConnellsburg and Philadelphia, and between Pittsburgh and Philadelphia, respectively. The first of these trips was made *via* Emmitsburg, Maryland, and the second wholly within the state of Pennsylvania. The witnesses' questioning of the passengers transported on these two round trips, indicates that in addition to sixty-six interstate passengers involved, seventeen persons were transported between points within this state. On both trips all Philadelphia tickets were filled in to show transportation to or from Camden, New Jersey. In the case of one witness, boarding the bus at Philadelphia for McConnellsburg, Pennsylvania, it appears that the ticket was sold to him by the bus starter who came through the vehicle while standing at the loading point in Philadelphia, and read as though covering two acts of transportation, one from Camden, New Jersey, to Emmitsburg, Maryland, and the other from Emmitsburg, Maryland to McConnellsburg, Pennsylvania. There is testimony both as to ticket sellers intimating that Camden tickets could be used for Philadelphia trips and also as to warnings given that when such tickets are purchased the passenger must ride through to destination.

[1] The decision of the Supreme Court of the United States in Sprout v. South Bend (1928) 277 U. S. 163, 72 L. ed. 833, 48 Sup. Ct. Rep. 502, is conclusive to the effect that the use of Camden tickets will not affect respondents' status if the service rendered is actually intrastate in nature, and indeed we do not understand respondents to deny this. Neither do they endeavor to explain the use of

tickets indicating Emmitsburg, Maryland, as a point of origin or destination.

[2] While in the present case respondents have at least made some gestures in the direction of preventing intrastate transportation, the record indicates a volume of this business in proportion to the total which does not indicate that very effective means have been taken for its control. With tickets being sold on a commission basis by restaurant and hotel keepers and others, respondents can have little or no control of the methods of making sales. Respondents even deny responsibility for the printed advertising issues by these persons. In the face of the showing that substantial groups of passengers leave with their baggage when changing busses in Philadelphia, respondents cannot well deny a knowledge that their Camden passengers are not bona fide such.

[3] In view of all the facts disclosed, we cannot regard respondents' use of tickets naming Camden, New Jersey, or Emmitsburg, Maryland, as anything other than a subterfuge which we have already condemned in Delaware, L. & W. R. Co. v. Frank Martz Bus Co. (1929) 9 Pa. P. S. C. —, P.U.R.1929D, 253, and Pennsylvania R. Co. v. Nevin Bus Lines (1929) 9 Pa. P. S. C. —. With so large a proportion of their passengers riding only between points within the state, respondents cannot escape the knowledge that they are engaged in intrastate commerce. Nor can they escape their concomitant responsibility by the means the record indicates they have taken for the handling of their interstate business. Although no penalty will be imposed upon respondents at this time, they are admonished herewith that something more effective must be done by them than the measures already taken, if they desire to avoid the penalties of the law. The complaint will be sustained and respondents ordered to cease and desist from furnishing any intrastate transportation. An order will issue accordingly.

OHIO SUPREME COURT

Logan Gas Company

v.

Public Utilities Commission of Ohio

[No. 21661.]

(— Ohio St. —, 169 N. E. 575.)

Valuation — Natural gas leaseholds — Commission duty.

1. The action of the Commission, in fixing the value of a gas company's leases on lands containing producing wells at the actual cost of the leases

to the company, was held to be erroneous, in view of the duty of the Commission to determine the value of the utility's property used and useful in public service, p. 248.

Valuation — Leases of nonproducing gas lands.

2. The refusal of the Commission to value leases, of a natural gas utility, of good gas producing land upon which there are no producing wells is proper in a rate proceeding, p. 248.

Valuation — Leases of gas lands — Prospective use.

3. A Commission is justified in refusing to value the leases of reasonably certain prospective gas producing lands as used and useful property for rate-making purposes, p. 248.

Valuation — Overheads — Financing costs — Going value.

4. An allowance of 7 per cent for general overheads, cost of financing, going concern value, and the like, in the valuation of natural gas property, was upheld, p. 248.

[December 24, 1929.]

ERROR *to review an order of the Public Utilities Commission fixing the valuation of a gas company's property; order affirmed with modifications and cause remanded.*

This is a proceeding to review a finding of the Public Utilities Commission, brought to this court by the Logan Gas Company. Briefly, the facts relative to the matter are that the Logan Gas Company filed an application for increase of rates in February, 1925, proposing what is known in the record as Schedule No. 7. This affects a large number of municipalities, as well as unincorporated villages, in the state of Ohio. While Schedule No. 7 was pending, the company filed Schedule No. 8, seeking to supersede No. 7. Upon consideration of the same, the Public Utilities Commission struck Schedule No. 8 from the files, because Schedule No. 7 was pending. See Logan Gas Co. v. Public Utilities Commission (1926) 115 Ohio St. 107, P.U.R. 1926D, 769, 152 N. E. 648.

During the pendency of these proceedings, many municipalities passed ordinances fixing and agreeing upon rates. Such matters, however, are of no concern here, except it creates a class of nonordinance municipalities.

After many hearings, the Public Utilities Commission fixed a tentative value of the property of the gas company for nonordinance towns as $10,769,077.04. A protest was filed by the gas company, and the Commission, upon further consideration, fixed a final valuation at $10,845,890.80, allocable to the nonordinance towns. A rehearing was applied for, which was denied, and this proceeding is instituted in this court for a review of the record.

APPEARANCES: Eagleson & Laylin, of Columbus, John E. Mullin, of Kane, Pennsylvania, and Chester J. Gerkin, of New York city, for plaintiff in error; Gilbert Bettman, Attorney General, Thomas J. Herbert, of

Cleveland, Grant E. Mouser, Jr., and George T. Geran, both of Marion, Charles F. Schaber, of Bucyrus, M. D. Hughes, of Athens, C. S. Huffman, of Ashland, Wesley Grills, of Lorain, and Chance Dewald, of Crestline, for defendant in error.

[1-4] PER CURIAM: One of the chief points contended for by the gas company is that the Commission erred in the amount which it included in the valuation for plaintiff's gas lands and leaseholds. The company claims a valuation of over $14,000,000 for these leaseholds, which may be classified as follows:

Class No. 1. Leases of tracts of land having producing gas wells drilled thereon from which gas is being furnished to the public.

Class No. 2. Leases of tracts of land proved by actual developments and operations in the immediate vicinity thereof to be good gas-producing lands, but which do not have any producing wells drilled thereon.

Class No. 3. Leases of tracts of land shown by surrounding or neighboring developments or operations, geological considerations, etc., to be reasonably certain to be good gas lands, at least as to large portions thereof, but not yet demonstrated to be such by actual drilling.

Class No. 4. Leases of tracts of land situate within the areas of territory where gas lands are known or assumed to exist from general geological conditions, but which are so remote from actual gas-producing wells or territory that they are merely prospective gas lands.

As to class No. 1, the Commission fixed the value thereon as $7,880.62, holding that the actual cost of these leases to the company is the only value which should be used for rate-making purposes.

We think this view ignores the value which should be attributed to property of the company, which is "used and useful," as provided by §§ 499—8, 499—9, 614—20, 614—23, etc., General Code. We are of opinion that the value should have been determined by the Commission rather than the actual cost of these leases to the company. This view requires us to reverse the holding of the Commission on this point and remand for its further consideration. The judges who concur in this view are Marshall, Chief Justice, and Kinkade, Robinson, Jones, Matthias, Day, and Allen, Justices.

As to class No. 2, to wit, leases of tracts of land proved by actual developments and operations in the immediate vicinity thereof to be good gas-producing lands, but which do not have any producing wells drilled thereon, the majority of the court are of opinion that, while the leases upon territory of such character may in the future be "useful," the same do not come within the purview of the statute, which requires the property to be given valuation to be both "used and useful." The leaseholds covering such character of territory not being both "used and useful," the Commission's views upon that point are affirmed. The judges concurring in this view are Marshall, Chief Justice, and Kinkade, Robinson, Matthias, and Allen, Justices.

As to classes 3 and 4, all judges concur that the Commission was right

in not allowing valuation therefor as property "used and useful."

The remaining grounds urged for reversal of the Commission's order are that there was an allowance of 7 per cent as sufficient for general overheads, cost of financing, going concern value, etc.; that the order of the Commission violates the Fourteenth Amendment of the Federal Constitution.

A majority of the court are of opinion that the finding of the Commission was neither unreasonable nor unlawful in those respects. Those entertaining such views are Marshall, Chief Justice, and Kinkade, Matthias, and Allen, Justices.

The findings of the Commission will, therefore, be affirmed, with the modification that the value, as provided in §§ 499—8, 499—9, 614—20, 614—23, etc., General Code, shall be fixed for the leaseholds in class No. 1, and the case is remanded to the Commission for such modification.

Order affirmed as modified, and cause remanded.

Marshall, C. J., and Kinkade, Robinson, Jones, Matthias, Day, and Allen, JJ., concur.

CALIFORNIA RAILROAD COMMISSION

Re Washington Water & Light Company

[Decision No. 21893, Application No. 15967.]

Consolidation, merger, and sale — Financial inability of purchaser.

The Commission refused to approve of the sale of a water utility's property to a company which did not appear to be in a position to finance payments for it and whose resources, in the opinion of the Commission, ought to have been devoted to the operation of property already owned rather than to the purchase of additional property.

[December 10, 1929.]

APPLICATION *of one utility for permission to sell a water plant to another utility and for the latter to issue stock; denied.*

APPEARANCES: Orrick, Palmer & Dahlquist, by Justin Jacobs, for Public Utilities California Corporation; E. Hendrickson and R. C. Waring, for Washington Water & Light Company.

By the COMMISSION: In this proceeding the Railroad Commission is asked to approve the transfer of the business and properties of Washington Water & Light Company to Public Utilities California Corporation,

and the acquisition and operation of such business and properties by said Public Utilities California Corporation, and authorize said Public Utilities California Corporation to issue $46,900 par value of its common capital stock in connection with the acquisition of said business, rights, and properties.

It appears that under an agreement dated November 24, 1928, as amended by an agreement dated April 29, 1929 (Exhibit "A"), Washington Water & Light Company agreed to sell, subject to the approval of the Railroad Commission, its public utility water properties to W. B. Foshay Company. By an agreement dated August 19, 1929 (Exhibit "B"), W. B. Foshay Company agreed to sell the aforesaid properties to Public Utilities California Corporation for and in the consideration of $46,900 of capital stock of said corporation.

The Commission has been advised that a receiver has been appointed for W. B. Foshay Company and a receiver for Public Utilities Consolidated Corporation of Arizona, which owns all of the outstanding stock of Public Utilities California Corporation. Information at hand shows that Public Utilities California Corporation has heretofore obtained its moneys necessary to pay for the properties it purchased through the sale of stock to W. B. Foshay Company and/or Public Utilities Consolidated Corporation of Arizona.

It does not appear from the record in this proceeding that either of said companies, or any one else, is willing to purchase stock of Public Utilities California Corporation in such an amount as would enable Public Utilities California Corporation to pay for the properties of Washington Water & Light Company. We do not believe that it is in the interest of those who are dependent for their public utility service on Public Utilities California Corporation to permit at this time the sale of properties to it. It seems to us that the company's resources, for the time being at least, should be devoted to the operation of the properties it now owns rather than the purchase of additional properties and that this application should be denied.

NEBRASKA STATE RAILWAY COMMISSION

Re Nebraska Pipe Line Company

[Application No. 8096.]

***Public utilities** — Ownership of property transported — Pipe line.*

1. A pipe line company transporting only its own gas was held to be neither a common carrier nor a public service corporation so as to warrant regulation by the Commission, p. 252.

RE NEBRASKA PIPE LINE COMPANY

Security issues — Commission jurisdiction — Pipe line company.

2. The Commission has no jurisdiction to regulate the securities of a pipe line company transporting only its own gas, p. 252.

[November 30, 1929.]

APPLICATION *of a pipe line company for authority to issue securities; dismissed for lack of jurisdiction.*

APPEARANCES: C. P. Craft, Attorney, Lincoln, and O. J. Shaw, Vice-President, Lincoln, for the applicant; B. E. Forbes, Chief Engineer, and Hugh LaMaster, Assistant Attorney General, for the Commission.

By the COMMISSION: Applicant, Nebraska Pipe Line Company, is a Nebraska corporation, engaged in the construction of a natural gas pipe line from a point near Chester, Nebraska, to Grand Island, Hastings, Kearney, and intervening points. A considerable portion of its lines is already laid, but it will not actually commence business for two or three months. It will handle none but its own gas, which will be purchased from the producing company and will be received from the producing company's lines near the Kansas-Nebraska state line. It will not sell gas at retail, but will wholesale it to different local gas companies owning and operating distribution systems. The gas handled will originate in Kansas, Oklahoma, and Texas. There is no authorization in the articles of incorporation for any transportation of gas for a consideration. Section 3 of the applicant's Articles of Incorporation is as follows:

"The general nature of the business to be transacted by the corporation shall be the installation, construction, ownership, and/or leasing and operation in the state of Nebraska and elsewhere, of pipe lines, compressor stations, and other suitable equipment and apparatus useful for the handling, transportation, delivery, and sale of the corporation's natural gas to the gas distribution systems of cities, towns, villages, and of private companies in the state of Nebraska and elsewhere; also the exploration and test drilling for natural gas, also for oil, also the drilling, installation, ownership, and/or leasing, and operation of natural gas wells, also of oil wells; also the ownership and/or leasing of such real estate as may be necessary or advantageous for carrying out foregoing corporate purposes."

The company holds no local franchises in Nebraska. The application states that the corporation "has not attempted to exercise the right of eminent domain." The application also states that right of way easements have been acquired by private negotiations, contract, and purchase.

The applicant asks permission to issue and sell 5,000 shares of common stock, and 10,000 shares of preferred stock, each share of each class to be of the par value of $100. It also asks permission to issue bonds in the sum of $1,000,000 face value. The securities issued are to be used in connection with the construction of the pipe line and its appurtenances.

Applicant states that none of the securities will be sold to the public.

[1, 2] While the applicant asks permission to issue the securities above specified, it questions the jurisdiction of the Commission to act. It assigns, as the reason for the apparently inconsistent position assumed by it, that it is uncertain as to the legality of the proposed securities, without approval, and it desires to avoid any question concerning their validity. We consider it proper for the company to file an application, as a matter of caution, although denying the power of the Commission to act in the premises.

It is our duty carefully to examine our power with respect to any case, whether a question as to jurisdiction is propounded by the parties or not. This is an obligation resting upon all tribunals, and is always precedent to the exercise of authority. Defiance Water Co. v. Defiance (1903) 191 U. S. 184, 48 L. ed. 140, 24 Sup. Ct. Rep. 63.

The power of the Commission over security issues is based upon § 676, Compiled Statutes of Nebraska, 1922, as amended by § 1 of Chapter 168, Laws of Nebraska for 1923, and by § 1, Chapter 141, Laws of Nebraska for 1925. It reads in part as follows:

"A common carrier or public service corporation doing business in the state of Nebraska, may issue stocks, bonds, notes, or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension, or improvement of facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations: Provided, and not otherwise, there shall have been secured from the Nebraska State Railway Commission an order authorizing such issue. . . ."

The jurisdiction of the Commission depends upon the answers to the questions:

A. Is the Nebraska Pipe Line Company a common carrier?

B. Is it a public service corporation?

The answer to the first question is, under the statements in the application and the evidence offered by the applicant, easily answered. A common carrier is defined under § 5483, Compiled Statutes of Nebraska, 1922, as follows:

"The term 'common carriers' as used herein shall be taken to include all corporations, companies, individuals, and association of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage, or control any railroad, interurban, or street railway line, operated either by steam or electricity or any other motive power, or part thereof, or any express company, car company, sleeping car company, freight and freight line company, telegraph and telephone companies, and any other carrier engaged in the transmission of messages or transportation of passengers or freight for hire."

Section 5081 of the Compiled Statutes of Nebraska provides, in part, as follows:

"Any company, corporation or association, formed or created for the purpose of transporting, transmitting,

or conveying crude oil, petroleum, or the products thereof, or gases, from one point in the state of Nebraska to another point in the state of Nebraska for a consideration are hereby declared to be common carriers."

As the company does not hold itself out to carry gas for other persons, and as it does not operate "for a consideration" or "for hire," it can not be considered a common carrier.

The answer to the second question, as to whether or not the applicant is a public service corporation, is one of much difficulty.

The applicant has filed an extensive and well prepared brief, which has been carefully examined by us. We have also consulted numerous authorities besides those cited by the applicant. The following is a list of cases which bear upon the subject:

Nowata County Gas Co. v. Henry Oil Co. (1920) 269 Fed. 742; United States v. Ohio Oil Co. (The Pipe Line Cases) (1914) 234 U. S. 548, 58 L. ed. 1459, 34 Sup. Ct. Rep. 956; Public Utilities Commission v. Landon (1919) 249 U. S. 236, 63 L. ed. 577, P.U.R.1919C, 834, 39 Sup. Ct. Rep. 268; Central Trust Co. v. Consumers' Light, Heat & P. Co. (1922) 282 Fed. 680, P.U.R.1923A, 548; Manufacturers' Light & Heat Co. v. Ott (1914) 215 Fed. 940; Mill Creek Coal & Coke Co. v. Public Service Commission (1919) 84 W. Va. 662, P.U.R.1920A, 704, 100 S. E. 557, 7 A.L.R. 1081; Pennsylvania Gas Co. v. Public Service Commission (1920) 252 U. S. 23, 64 L. ed. 434, P.U.R. 1920E, 18, 40 Sup. Ct. Rep. 279; Peoples Nat. Gas Co. v. Public Service Commission (1926) 270 U. S. 550, 70 L. ed. 726, P.U.R.1926D, 187, 46 Sup. Ct. Rep. 371.

The cases are not in harmony with one another, but as above stated, the preponderance seems to be against considering the applicant a public service corporation.

In view of this condition and of the fact that the legislation on the subject of pipe lines in connection with rates and service confines the jurisdiction of the Commission to such lines as are operated as common carriers, we feel that we should not assume jurisdiction of this matter.

NEBRASKA STATE RAILWAY COMMISSION

Re Central West Public Service Company

[Application No. 8180.]

Security issues — Bonds to cover non-utility property.

A public utility should not be authorized to issue bonds with respect to the acquisition of a non-utility ice plant not connected with the utility's operations, where such bonds, if permitted, might become a burden on the utility property or might hinder the utility's service, inasmuch as they would be a lien upon the company's utility property as well as non-utility property.

[February 13, 1930.]

NEBRASKA STATE RAILWAY COMMISSION

APPLICATION *of a public service company to issue securities; denied in part and granted in part.*

APPEARANCES: E. B. Crofoot, Vice-President and General Counsel, and L. D. Densmore, Attorney, Omaha, for the applicant; B. E. Forbes, Chief Engineer, L. W. Kemmer, Chief Accountant, and Hugh LaMaster, Assistant Attorney General, for the Commission.

Commissioner Miller, presiding.

By the COMMISSION: The applicant, Central West Public Service Company, of Nebraska, is a corporation organized and incorporated under the laws of the state of Delaware and doing business exclusively in the state of Nebraska. It owns and operates several utility properties in this state and has recently purchased a natural ice property located near Crystal Lake, Dakota county, Nebraska. Among its properties are a gas plant at Norfolk, a gas plant at Columbus, an electric property at Albion, a telephone property at Jackson, and an electric transmission line from which current is furnished to the town of Dakota City, at wholesale, and to the town of Jackson, at retail. It has an authorized capital stock of $300,000 divided into 3,000 shares of the par value of $100 each. It has heretofore been authorized by this Commission to issue stock in the amount of $90,000 and bonds in the amount of $465,000. None of the securities is in the hands of the public but all of them are held by the Central West Public Service Company, a Delaware corporation, of which the applicant is a subsidiary.

By its articles of incorporation the applicant is authorized to own and operate public service properties, ice plants, and various other forms of property. It is conceded that the ice plant is not a public utility.

The applicant now desires to issue, upon the basis of such expenditures, its 30-year 6 per cent first mortgage bonds, series "A," dated November 1, 1926, of the par value of $159,000 for the purpose of pledging the same as collateral under the provisions of the first lien collateral indenture of the Central West Public Service Company. Applicant has made net additions and improvements to its utility properties, which have not yet been capitalized, to the amount of $52,488.48. It has also acquired the ice plant, above mentioned, at a cost of $159,132.09, making a total of $211,620.57. The $159,000 bond issue asked for is approximately 75 per cent of the total, that per cent being the limit under the terms of the lien indenture. The question now arises as to whether or not the non-utility property may be used as a basis for the issuance of securities, thus making them a lien on all its property, both utility and non-utility.

The stock and bonds act §§ 676–678, compiled statutes of Nebraska, 1922, under which this Commission proceeds when acting upon applications for security issues, is designed to relate only to the common carrier and public service corporations.

Section 676 of the act, as amended, Session Laws 1925, Chap. 141, so far

as material to the present proceeding, reads as follows:

"A common carrier or public service corporation doing business in the state of Nebraska, may issue stocks, bonds, notes, or other evidence of indebtedness payable at periods of more then twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations: Provided, and not otherwise, there shall have been secured from the Nebraska State Railway Commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the Commission, the use of the capital to be secured by the issue of such stock, bonds, notes or other evidence of indebtedness is reasonably required for the said purposes of the corporation."

The provisions of the statute must be considered in view of the constitutional requirements that common carriers and public utility corporations shall make reports to this Commission (Art. X, § 1), that their capital stock shall not be increased for any purpose except after notice (Art. X, § 5), and that no dividend shall be declared except out of net earnings after paying all operating expense including a proper depreciation reserve sufficient to keep the investment intact (Art. X, § 5). These requirements indicate strongly that public service corporations and common carriers are in a class by themselves and that only public utility properties are to be dealt with in their regulation.

Applicant insists that the expression "acquisition of property," as used in the statute, may mean any form of property, non-utility as well as utility property. No direct authority is cited to sustain such position. In Re Custer Electric Co. (1914) for authority to issue stock and bonds 7 Ann. Rep. Neb. S. R. C. 302, is cited, however, as sustaining the applicant's view. In that case the applicant desired to expend $12,700 in the construction of an artificial ice plant. The ice plant was to be built as part of the electric light plant. It was proposed to use the exhaust steam, which was a waste product of the electric plant, in the manufacture of ice. It developed at the hearing that the applicant was not giving any day service; that there was a demand for such service, but that under existing conditions the consumption in current during the day would be insufficient to pay operating cost; that to furnish such service without developing an additional load would be uneconomical; and that the operation of an artificial ice plant in conjunction with the electric light plant would furnish the additional load necessary to justify giving day service. It also appeared that but little additional help would be required, and that the result of the installation of an ice plant would reduce the cost of generating current.

The circumstances of that case are not comparable with the circumstances of the present application. In discussing the subject, Commissioner Clark, at p. 304, said:

"As a general principle, where the the control of the capitalization of public service corporations is vested

in Commissions, such corporations are not permitted to issue and sell their securities for the purpose of using the proceeds thereof in any other business than that which is commonly termed 'public service.' At the present time the manufacture and distribution of ice is not regarded as a public service."

The case of People ex rel. Binghamton Light, Heat & P. Co. v. Stevens (1911) 203 N. Y. 7, 24, 96 N. E. 114, appears to be opposed to applicant's view. It is there said:

"It is said by the relator that the Public Service Commissions Law as it existed in 1909 did not make any distinction between expenditures for operating purposes and expenditures for permanent improvements, but provided generally for the issue of stocks, bonds, notes, or other evidence of indebtedness payable at periods of more than twelve months after the date thereof 'when necessary for *the acquisition of property,* the construction, completion, extension, or improvement of its plant or distributing system, or for the improvement *or maintenance* of its service *or for the discharge or lawful refunding of its obligations.*'

"Omitting from that part of the statute just quoted the words in italics it would then clearly refer to the permanent improvement of the plant or distributing system, and not to mere renewals or replacements. The words in italics, although of broader meaning than those not in italics, should be construed in connection with them, and in view of one of the paramount purposes of the legislature in establishing the Commissions, which was to protect and enforce the rights of the public. The contention of the relator would enable any corporation to pay for labor, fuel, and other supplies constituting the most ordinary of all operating expenses by obligations extending less than twelve months and then apply from time to time to the Commission for authority to issue stock or bonds for the payment of such obligations and insist upon the same as a matter of right, without limit."

The ice plant is not connected with the other properties of the applicant and is not auxiliary to them or any of them; nor is it operated to utilize an otherwise useless by-product of any of them.

Under the terms of its first mortgage bonds, issued by the company to reimburse it for expenditure made for the ice property would be secured by the company's utility properties as well as by its ice property. The Commission finds that it should deny applicant's authority to issue bonds with respect to the acquisition of the non-utility ice property since its operation is not connected with the utility properties, and because such bonds, if applicant were permitted to issue the same, might become a burden on the utility property or might hinder the utility service as the bonds would be a lien on applicant's utility properties as well as its non-utility property. Only bonds covering 75 per cent of the $52,488.48, expended for utility property, or $40,000, should be authorized.

The bonds are not to be sold to the public but will be taken by the parent company, and pledged as hereinafter stated, and will be issued to the extent of only 75 per cent of the capital ac-

tually invested (which is the limit fixed in the mortgage) and considering the large excess in property value of the company over its total securities and in view of the agreement of the applicant, entered into at the time of the hearing, that each bond should bear a statement on its face that it is issued for the sole purpose of being pledged with the First Union Trust and Savings Bank of Chicago, Illinois, as collateral security to the first lien collateral indenture of the Central West Public Service Company, we shall permit bonds in the amount of $40,000 to be issued. We find that the use of the capital to be secured by the issue of such bonds is reasonably required to reimburse the applicant, in part, for expenditures, for additions and improvements made by it.

MAINE PUBLIC UTILITIES COMMISSION

F. A. Ricker et al.

v.

Turner Light & Power Company

[F. C. 806.]

Rates — Effect of operating economy — Purchase of current.

1. An electrical distributing utility which purchases power from a wholesale company at a lower rate than it could generate it at its own plant, should allow such economy to be reflected in rates to consumers, p. 261.

Valuation — Property used or useful — Generating plant — Purchase of current.

2. Customers of an electrical distributing utility which is obtaining part of its power from a wholesale company at a lower rate than it could generate it at its own plant, should not be required to pay rates which would include elements of cost with relation to the value of the utility's generating plant to a greater extent than the use of that equipment incidental to the rendition of the service, p. 261.

Rates — Promotional rates — Electricity.

3. The Commission was convinced that the management of an electrical utility should be permitted a trial of rate proposals which, through promotional feature, were calculated to stimulate consumption and would tend to permit a more diversified use of energy and constitute an average reduction, p. 263.

[February 4, 1930.]

COMPLAINT *against the rates of an electrical utility; rates adjusted.*

APPEARANCES: Frank W. Winter, for complainants; William B. Skelton, for Turner Light & Power Company.

By the COMMISSION: Complainants in this case filed complaint with this Commission on August 8, 1929, stating that inasmuch as the Turner Light & Power Company is purchasing electric energy from the Central Maine Power Company at 2 cents per kilowatt hour and is distributing such energy to its customers at the rate of 15 cents per kilowatt hour, the Commission is asked to require a reduction in the distribution rate, and also to reduce the monthly minimum charge from $1.50 to $1. In support of their requests, complainants have made reference to the rates obtaining in the nearby city of Auburn, which is served by the Androscoggin Electric Company, a utility controlled and operated by the Central Maine Power Company.

Pursuant to proper notice to the parties in interest, public hearing was assigned for September 11, 1929, at 10 o'clock in the forenoon, at the Town Hall, in the town of Turner. By request of interested parties, hearing was continued until September 13, 1929, at the same hour and place. On further request of parties involved, adjournment was taken to the Grange Hall in the town of Turner and hearing held on said date.

The Turner Light & Power Company was incorporated under the General Law on May 14, 1915. The purpose of its organization was the generation and distribution of electric energy for light, heat, and power within the town of Turner and within any other city or town adjacent to Turner, in which no other person, firm, or corporation is legally conducting the business of supplying electricity, or is authorized so to do. Soon after its incorporation it was in readiness to furnish service. At that time it purchased the pole lines of an existing telephone company, on which it installed its wires and projected the service into Buckfield as far as Howes Corner, going south as far as Poplar Hill, so called, and through Turner Center. Certain rural lines or extensions have since been constructed in accordance with agreements which called for a contribution of material and labor on the part of both the prospective customers and the company, apparently with the understanding that maintenance was to be borne by the company. It appears that at the present time the company's distribution lines constitute approximately 41 miles, of which 29.5 miles are considered as extensions serving outlying rural sections. Aside from street lighting in the towns of Turner and Buckfield, it serves a total of approximately 440 customers.

The company during approximately the first six years of operation utilized its own hydroelectric plant in Turner for the production of all energy supplied its customers. During that period there were times when water conditions did not permit of the utilization of the generating plant to the extent necessary in supplying the public demand. It was, therefore, incumbent on the company to obtain additional energy from another source, and this it did in the early part of 1922, when a joint arrangement was made with the town of Turner, whereby on agreement, energy was obtained

from the Androscoggin Electric Company for the operation of an electric railroad, then owned by the town of Turner, and said town resold to the Turner Light & Power Company such power as it required. This joint purchase from the Androscoggin Company continued until May 1926, when the Turner Light & Power Company entered into a 5-year contract with the Androscoggin Company. By the terms of this contract electric energy is purchased at 2 cents per kilowatt hour, subject to a monthly minimum charge of $200. This energy is transmitted in the form of 10,000 volts, 60 cycle, 3-phase alternating current, over a line of 4.2 miles owned by the Turner Company and extending from point of connection with the Androscoggin Company to the Turner Company's substation in Turner Village where it is metered and transformed to the distribution system at 2,300 volts.

Turner Company's report filed with the Commission for the year ending December 31, 1928, shows that it purchased 72,970 kilowatt hours and paid therefor the yearly sum of $2,400, or the stipulated monthly minimum charge. For this minimum payment it was entitled to receive an allotment of 10,000 kilowatt hours per month, or for the yearly period, 47,030 kilowatt hours more than it actually received.

Information is furnished for the year 1929, showing that for the first eight months, energy obtained monthly from the Androscoggin Company varied from 6,400 to 9,710 kilowatt hours, or a total of 63,200 kilowatt hours for that period of months. For the succeeding four months the purchased kilowatt hours were—September, 11,650; October, 12,550; November, 10,150; and December, 9,440. The total purchase by the Turner Company for the twelve months represented 106,990 kilowatt hours, which at the established rate, and monthly minimum charge called for a payment of $2,487. Again it is shown that had the company so elected it could have received for the eight months' period and for December on the minimum payment of $200 per month, an additional 17,360 kilowatt hours.

The company is unable to furnish information showing the quantity of energy required for distribution. It states that the watt-hour meter registering the power generated at its own station has been out of order for a considerable time and, therefore, the output is undetermined. In arriving at an approximation of the total current going into its system, it estimates that its generating station furnishes 34 per cent. Since the hearing the company has re-established a proper metering device at its station and reports the following information covering its operation:

November—Station operated 26 hours and produced 1,380 kilowatt hours.

December—Station operated 104½ hours and produced 3,930 kilowatt hours.

The company admits that it is forced to purchase part of its required energy and that in view of the fact that the purchase is at 2 cents per kilowatt hour, it can not afford to go back to a continuous operation of its power plant. Aside from the conditions which make the generating station in-

operative during periods of insufficient water supply, there are elements of operating costs which influence the purchase of energy. The company's representative states that there are many hours in the day when not over 15 or 20 kilowatt hours are produced and that in such instances the labor cost of 60 cents per hour for the station operator, means 4 cents per kilowatt hour. That to avoid the operator or attendance cost would require the installation of an automatic station at a very heavy and unreasonably large capital expenditure, considering the size of the plant. It is the company's contention that the power station, while not used primarily for the production of electric energy, is nevertheless, considered important in that it serves as a standby service should accidents or other causes prevent its purchase from the Androscoggin Company. That at times it is used to maintain voltage conditions on its system, and serves when it appears that its operation is judicious when considered in connection with purchased energy.

Question is raised as to the merit or necessity of the existing power station. It is true that it was the source of supply during the early years of the company's operation and apparently supplied the then existing demand, except during shortage of water, when service was curtailed. In general, energy is furnished for domestic lighting, while other uses are confined to small power customers and street lights. Charts presented by the company show in a general way a very restricted use by customers as a whole. The low load point represents approximately 85 per cent non-revenue load. The company cites certain conditions which result in low percentage use of its distribution system and in consequence an increase in the loss of energy. It is stated that of the power purchased from the Androscoggin Company about 56 per cent is used by all customers, and that the average domestic use over a yearly period is not in excess of 50 per cent. It is apparently true that abnormal losses attend rural line services or situations where there is a sparsity of customers. The entire territory served is not densely populated. On its distribution system of 41 miles there are approximately 440 customers, or slightly in excess of an average of 10 to a mile. This average is due to the fact that on 17½ miles of the so-called extensions there are located a total of 47 customers requiring the installation of 37 transformers. Referring to this particular situation, the company estimates, that in furnishing energy to those customers, there is an average transformer loss of 15 kilowatt hours per month, with an additional kilowatt loss incident to the current drawn through the customer's meter, and that such losses are exclusive of those which occur on the lines prior to reaching the customers' transformers. No complaint is involved as to the condition of the company's distribution system and no evidence is offered as to the general loss of energy on the system. In this connection, however, the company states that incident to the conversion of power from 10,000 to 2,300 volts at its substation, there is a loss of approximately 45 kilowatt hours per day. No reference has been made to loss of energy transmitted over the

4.2 mile line extending from the point of connection with the Androscoggin Company to the Turner Company's plant. It is believed that the condition under which the purchased energy may be obtained reflects a line loss which is immaterial and affects the purchase rate of 2 cents per kilowatt hour to a negligible extent.

[1] From the evidence presented it is apparent that the purchase of power from the Androscoggin Company is to the advantage of the Turner Company and to the extent that it is more economical than energy generated at its own station, should be reflected in the rates paid by its customers. This company represents that its generating plant supplies approximately 34 per cent of its total energy requirements and that in doing so, the cost of its operator alone represents at times a production charge of 4 cents per kilowatt hour. In arriving at an estimated cost per kilowatt for power generated at its own station, other elements must be considered. It does not appear necessary to enumerate all elements that are involved. The company's report, filed with the Commission for the year 1928, shows the generating plant as representing an investment in fixed capital of $20,611.11. It appears that an appraisal of the company's property, made by Stone and Webster as of August 1928, carries the generating plant at a reproduction cost less depreciation figure of $26,450. This is the plant which the company claims is useful in that it generates 34 per cent of its energy requirements, that it is used in regulating the voltage, that it is needed as a standby service should interruption or failure occur in the delivery of energy by the Androscoggin Company, and finally that since it constitutes an investment it should be employed for the greatest economy.

[2] The necessity of the generating plant and its component parts during the early years of the company's operation is evident. With changing conditions it was necessary to resort to another source of energy in order to meet increased public demands and assure a more constant service. This assurance was established by the purchase of power from the Androscoggin Company in quantities which appear to represent 66 per cent of the requirement. It is apparent from the evidence in the case that the rate fixed by the Androscoggin Company for the purchased power is considered reasonable and fair by the Turner Company and it further appears that such rate is lower than the attending kilowatt hour costs at the Turner generating station. It has been stated that the wage of the operator at this station, at times, represents a kilowatt hour costs of 4 cents. If that figure is to be compared with the rate at which purchase is made, it would be reasonable to make due allowance for line losses in the transmission of the energy over the 4.2 miles from the point of delivery by the Androscoggin Company to the metering point at Turner Village, and such further losses that occur in transforming the power to the 2,300 volt distribution system. With such allowances it is the belief that the gross cost of the purchased power, delivered on the distribution system, is slightly in excess of 2 cents per kilowatt hour. Comparison of power cost can not be confined solely to the foregoing reasoning.

The company's investment in generating plant must be considered in the light of other elements, such as operating expenses and fixed charges. Conservative estimate of 12 per cent for such elements, based on an arbitrary amount of $20,000, representing the generating station investment, produces an annual requirement of $2,400 for that part of the property. It, therefore, appears that such carrying costs on the generating plant equal the yearly minimum charge paid the Androscoggin Company, which payment based on the rate of 2 cents per kilowatt hour, represents a yearly allowance of 120,000 kilowatt hours.

No specific information is furnished supporting the company's statement that the power station is used at times to raise the voltage on parts of its system. No estimate can be made at this time to what extent the station serves for this purpose or what investment is necessary by reason of such requirement. For a company of this kind it is our opinion that a separate voltage regulator unit, if found to be expedient, would not exceed an investment in excess of $2,000. Automatic type may be installed thereby voiding the usual labor operating expense.

The practice of maintaining an auxiliary plant for the production of power when other sources suffer breakdown or interruption is common with both public utility and industrial operations. Such precautionary measure or standby service depends on conditions warranting safeguards. Viewing the situation in this case no evidence is offered showing that the Androscoggin Company has experienced any difficulty in supplying energy nor that the Turner Company may reasonably expect a serious interruption. It is true that at periods of unusual weather conditions, breakdown in service is likely to occur and in this connection it appears reasonable to assume that since both companies are operating in contiguous territories, that such interruptions would be common to both.

The conditions herein evolved raise the question as to the necessity of the Turner Company's generating plant. It is apparent that its operation is limited and that little or no economy is realized in its utilization as compared with the cost at which all the needed power may be purchased. If, however, the cost of generating energy equalled the rate at which it may be obtained elsewhere, there still remains the element of return on the investment, and if that increment is included it must be reflected in the rate paid for service. Beyond the extent to which it may be used in regulating voltage, does it constitute property that may be considered used or required to be used in its service to the public?

Plattsburg v. Plattsburgh Gas & E. Co. (N. Y. 1926) P.U.R.1927B, 769.

"Only one half the full present day value of stand-by equipment of an electric company was included in the rate base where it was probable that current could be purchased for a number of years at a reasonable price."

Re Kittanning Teleph. Co. (Pa. 1923) P.U.R.1923B, 842.

"Only that portion of utility's property which is presently or prospectively necessary for public use can be considered in arriving at the fair value for rate-making purposes, notwith-

standing the fact that the utility may have been required to purchase additional property in order to secure that part which is required for its business."

Considering the conditions attending the operation of the company's generating plant and the terms on which power is obtained from the Androscoggin Company, the customers of the Turner Company may not be required to pay rates which include elements of cost in excess of those incident to the purchased power.

[3] The property of the Turner Light & Power Company was purchased by the present owners in the fall of 1928. At the time the instant complaint was presented, the rates in force were those which were established by the former owners on October 1, 1920. The rate for general lighting and appliances was 15 cents per kilowatt hour, subject to a monthly minimum charge of $1.50.

On August 19, 1929, the company filed with the Commission a new rate schedule, designated as M. P. U. C. No. 3, thereby establishing on September 19, 1929, a revision and cancelation of the former rates.

Since the complaint in this case involves the rate and monthly minimum charge applicable to domestic or household services, we shall confine our consideration to such service, and show the following as the rates which were established, effective September 19, 1929 [Table at bottom of page.]

"Domestic Rate for Private Homes And Farms D-1

For equipment consisting of lighting, heating, cooking, incidental use, and mechanical power.

Rooms counted for billing—All living rooms, bathrooms, and one hallway, unfinished attic, cellars, storage space, laundry, private garages, pantry, not counted. Lighted dairy barns are counted.

Minimum Charge

Year round use—$1.50 per month —for equipment of lighting and small appliances, none rated over one horsepower capacity.

Seasonal use—$1.50 per month but not less than $15 in any consecutive ten months or fraction thereof.

Both classes—For larger appliances and motors add 50 cents per horsepower of capacity in excess of one horse power."

It is to be noted that in the first instance the new rates constitute a reduction of 2 cents per kilowatt hour and that as the quantity consumption of energy is increased, much lower rates are available. The company intimates that it is too early to predict exactly what reductions in revenue will result from all the rate decreases. It, however, estimates that on the

Size of Residence	First Step 13¢ per Kw. hr. for the first	Second Step 6¢ per Kw. hr. for the next	
Up to 7 rooms	35 kw. hr.	56 kw. hr.	All remaining kilowatt hours at 4¢ per kilowatt hour
8 rooms	40 kw. hr.	64 kw. hr.	
9 rooms	45 kw. hr.	72 kw. hr.	
10 rooms	50 kw. hr.	80 kw. hr.	
11 rooms	55 kw. hr.	88 kw. hr.	
12 rooms	60 kw. hr.	96 kw. hr.	

More than 12 rooms not counted.

1928 volume of business, the reduction will be in excess of $1,500. Figures are furnished for a monthly period showing a list of thirty customers with a total use of 2,493 kilowatt hours. Under the new rates the individual amounts produce a total payment of $227.91, as compared with $345.51 had the old rates been applicable. It is expected that some immediate reduction in revenue will result, but it is the hope of the company that with an increased use of energy at the lower rates, added revenue may be obtained.

The main cause of complaint seems to rest with the enforcement of the monthly minimum charge of $1.50. Specific information is not furnished showing how many customers confine their use to the application of this charge. Many reasons are advanced in support of this charge: the principal being the relatively small service use made by some customers, the cost of line maintenance, transformer requirements in view of customer locations, and the attending high energy losses.

Available figures show the following results of the company's operations:

	1926	1927	1928
Total operating revenues	$15,251.09	$15,484.00	$17,344.33
Total operating expense	11,047.31	9,631.27	10,246.73
Net operating income	$4,203.78	$5,852.73	$7,097.60

It is to be noted that the operating revenues for 1926 and 1927 are approximately $2,000 less than that for 1928. In this connection it also appears proper to recognize the company's claim that the new rates will result in an immediate revenue loss to an amount somewhat comparable to the gain realized in 1928. What the year 1929 produced is not available and in consequence it is necessary to draw comparisons for the preceding years.

The rates of this company were before this Commission on complaint made in the early part of 1926, and were considered in Case F. C. 635. In that instance claim was made by certain customers that the rates were unreasonable and relief was sought. At that time the Commission made an exhaustive study of the company's condition and found that the revenues then being earned were too small and that no reduction in lighting rates could be made at that time.

As has been shown in the pending case, the company has established new rates with the intent of promoting a greater use in the service it renders. It also appears that subsequent to the hearing, the company offered for filing an amendment to its rate schedule M. P. U. C. No. 3 thereby proposing the establishment of the following rates and conditions:

"Domestic Rates for Private Homes and Farms D-1

For equipment consisting of lighting, heating, cooking, incidental use, and mechanical power.

First 35 kilowatt hours used in any month, 13 cents per kilowatt hour.

Next 55 kilowatt hours used in any month, 6 cents per kilowatt hour.

All over 90 kilowatt hours used in any month, 4 cents per kilowatt hour.

Minimum charge

Year-round use—The above schedule is subject to a minimum monthly charge of $1.50 for lighting and equipment individually rated not more than 1,500 watts.

Seasonal use—Subject to minimum monthly charge of $1.50 (but not less than $13.50 in any consecutive nine months or less for lighting and equipment individually rated not more than 1,500 watts.

Both classes—For individual equipment exceeding 1,500 watts, add 50 cents per kilowatt per month in excess of 1,500 watts but not more than $2.50 per month, year round use, or more than $22.50 in any consecutive nine months (or less)."

Action having been taken by the company in the lowering of the consumption rate which was effective at the time complaint was made, or prior to September 19, 1929, the question arises as to whether or not the proposed rates should be given a trial period in order to determine the result of their application. The former rate was in force for a period of nine years and during that time was before this Commission on complaint. It may be said that a rate of 15 cents per kilowatt for all lighting and incidental purposes is high and in fact prohibitive when considered in connection with the use of electrical appliances. The new rates constitute not only reductions, but carry a promotional feature which will tend to permit a more diversified use of energy. We are of the opinion that the present management of the company should be permitted a trial of the rate proposals for a yearly period and that thereafter the case may be reopened, either on complaint of the customers or by the Commission on its own motion, in order to determine what further action, if any, may be taken on the rates which we shall at this time prescribe. [Order omitted.]

WISCONSIN RAILROAD COMMISSION

Re Green Bay Water Department

[U-3858.]

Payment — Advance payment — Metered service.

1. The practice of a municipal utility in billing in advance for metered water service upon the basis of past consumption is incorrect, since it is not only confusing to the customer but also places the accounting department at a disadvantage, p. 268.

Payment — Billing — Advance payment for metered service.

2. The Commission recommended that a municipal plant requiring advance payment for metered water service should bill all advance charges for a specific period on separate bills marked "deposit," p. 269.

Accounting — Advance billing — Metered water service.

3. Proceeds from bills for advance payment of metered water service should be credited to a "deposit" account in the general ledger, p. 269.

[January 28, 1930.]

APPLICATION *of a municipal water department for authority to increase rates; rates adjusted.*

By the COMMISSION: Application was filed July 15, 1929, by the city of Green Bay Water Department for authority to increase its rates for water service. The lawful schedule now in effect is as follows:

Fire Protection Service—$36,000 per year covering the use of mains and hydrants up to and including the terminal hydrant and connection on each line of main existing on June 28, 1918. For all extensions of fire service a charge of 7 cents per lineal foot of pipe shall be assessed on the basis of length of main put into use between hydrants placed, plus a fixed charge of $6.50 per hydrant set for each hydrant added to the system.

This payment does not include water for sewer flushing but only water used for fighting fires and for flushing and testing hydrants.

Public Service

Street sprinkling ..... 10¢ per 100 cu. ft.
Flushing sewer—
1st hour's use, or fraction thereof .... 60¢
Each additional hour ..... 30¢
Horse troughs and drinking fountains—meter rates.
Public buildings—meter rates.

Private Fire Protection.—This service may consist of automatic sprinklers, private hydrants, or stand-pipes.

Service Charge

2"	connection	$7.50	per quarter
2½"	"	9.00	" "
3"	"	12.00	" "
4"	"	15.00	" "
6"	"	18.75	" "

Commercial and Industrial Service

Service Charge—one consumer on a meter

⅝"	meter	$1.25	per quarter
¾"	"	2.00	" "
1"	"	2.50	" "
1½"	"	4.00	" "
2"	"	7.50	" "
3"	"	12.00	" "
4"	"	15.00	" "

Each additional consumer on the same meter, 50 cents per quarter.

Output Charge—per quarter—per meter

								per 100 cu. ft.
First	500	cu.	ft.	used	per	quarter	..	24¢
Next	1,500	"	"	"	"	"	..	22¢
"	1,000	"	"	"	"	"	..	20¢
"	7,000	"	"	"	"	"	..	18¢
"	15,000	"	"	"	"	"	..	14¢
"	25,000	"	"	"	"	"	..	12¢
"	25,000	"	"	"	"	"	..	10¢
"	25,000	"	"	"	"	"	..	8¢
Over	100,000	"	"	"	"	"	..	5¢

Payments for water service shall be made in advance based upon the consumption for the preceding billing period.

A consumer or unit of service shall consist of any space or area occupied for a distinct purpose such as a residence, apartment, flat, store, office, or factory. Suites in houses or apartment buildings where complete house keeping functions (such as cooking) are not exercised shall be classed as rooming houses. Thus houses and apartment buildings having suites of one, two, or more rooms with toilet facilities but without kitchen for cooking shall be classed as rooming houses.

Where service is furnished on other

than a yearly contract basis the quarterly service charge for each size connection shall be 50 per cent of the regular annual service charge. The total service charge, however, for a period of one year or less shall not exceed the amount which would be charged for a year's service on a regular annual basis. Output charges shall be as outlined above.

In all cases of nonpayment of the charges for water service in ten days after such charges are due, the supply shall be cut off and the water not turned on again, except the prepayment due is made, together with the sum of $1.

The city of Green Bay is divided into three districts, bills being rendered quarterly by districts, except to large industrial and commercial customers who are billed monthly.

Application is made for authority to increase the 5-cent rate to 6 cents per 100 cubic feet, and to render bills to large customers on a monthly basis. Petitioner states such increase to be necessary in order to enable the utility to produce sufficient income to permit it to earn a reasonable return on the investment and make the necessary repairs, extensions, and replacements.

Hearing was held August 13, 1929, at Green Bay, Wisconsin, the appearances being:

Thomas Dwyer, Corporation Counsel, and James Church, Superintendent, for applicant; and Mrs. E. DeFalque, in own behalf.

An amended application was filed November 21, 1929, and a hearing on the amendment held at Madison, December 6, 1929. The appearances on December 6th were as follows:

Thomas Dwyer, Corporation Counsel, James Church, Superintendent, Water Department, and J. Samuel Hartt, Consulting Engineer, for the applicant; Mrs. Lulu Bellin, on own behalf, Eugene Vieux, on own behalf, J. J. Colignon, Attorney, Green Bay, in opposition.

In the amended application petitioner requests authority to put into effect the following schedule:

			per 100 cu. ft.
First	500	cu. ft. used per quarter ..	24¢
Next	1,500	" " " " " ..	22¢
"	1,000	" " " " " ..	20¢
"	7,000	" " " " " ..	18¢
"	15,000	" " " " " ..	14¢
"	50,000	" " " " " ..	12¢
"	75,000	" " " " " ..	10¢
"	100,000	" " " " " ..	8¢
Over	250,000	" " " " " ..	6¢

No change is proposed in minimum and service charges.

There was submitted by applicant a report of an examination of the Green Bay Municipal Water Works by J. Samuel Hartt, consulting engineer, Madison, Wisconsin. The principal features of this report emphasized are as follows:

1. The water supply is inadequate.
2. The water storage capacity is inadequate.
3. The central pumping plant is inefficient and should be electrified.
4. Operation of the wells on the west side of the river should be made automatic.
5. The accounting system should be modernized.
6. The rate schedule should be adjusted.

Since the institution of this proceeding which covers No. 6 in the above list, the books and records have been audited and steps taken to revise the accounting procedure. The other conditions noted it is proposed to remedy as soon as funds are available.

An examination of the books and records shows that on August 31, 1929, the book value of the water works was approximately $1,411,000 with bonds outstanding of $919,000. From the records it appears that the cost of operation for the year ended December 31, 1929, will exceed that for the previous year. Based on the eight months elapsed the normal estimated cost of operation, including fixed charges, it appears will be approximately as shown below:

Operating Cost	
Steam power pumping	$24,257.48
Electric power pumping	18,241.38
Total	$42,498.86
Distribution expense	6,331.69
Commercial expense	4,002.49
General and miscellaneous	8,916.72
Total cost Jan. 1—Aug. 31, 1929	$61,749.76
Estimated cost Jan. 1—Dec. 31, 1929	92,624.63
Estimated allowance for local taxes	22,588.00
Estimated allowance for retirement expense	17,630.00
Return on book value at bond interest rate of 6%	84,660.00
Total estimated cost of operaton	$217,502.63

A water works supplies two main classes of service, namely, general service and fire protection service. For the year ended December 31, 1928, the revenues received were divided as follows:

General service	$153,392.97
Fire protection service	38,038.70
Total	$191,431.67

Apportioning the estimated cost of operation between the two classes of service noted, it is found that if the fixed charges as well as the out of pocket costs are to be covered by the revenues of the department, rates must be established which will provide total earnings approximately as follows:

General service	$158,464.51
Fire protection service	59,038.12
Total	$217,502.63

It appears from the above that on a conservative basis general service rates should be increased to provide additional revenue of about $5,071.54, while fire protection service should be increased $20,999.42. If the charge for the latter service remains at $38,-038.70, general service would have to bear the entire $26,070 increase noted if all the elements entering into the cost of supplying water service are to be covered. Each class of service, however, should carry its share of the cost of operation.

The change originally proposed by applicant of 1 cent per 100 cubic feet on the last step of the output schedule will not provide the additional revenue required, according to our analysis of the sales of water to one hundred and fifty-seven monthly and to quarterly billed customers using large quantities. Applicant now proposes, therefore, to increase the size of the blocks comprising the quantities of water supplied under the last four rates in the schedule. The service charges might be increased equitably, it appears from our analysis, in which case the output charges could be placed at a somewhat lower level. However, after carefully considering the various factors involved the block revision, we are satisfied, will prove satisfactory and provide such additional revenue as should be obtained from general service customers.

[1] The practice followed by the utility that "payments for water serv-

ice shall be made in advance based upon the consumption for the preceding billing period" results in a great deal of unnecessary work. This practice was inherited by the municipal plant when the property was acquired by the city, it being one commonly followed during the early development of water utilities, particularly those privately owned. The municipal plant is protected from delinquent accounts by the statutory provisions which require it to place unpaid bills on the tax roll.

The practice of charging for unmetered or flat rate service in advance is a common one. However, the practice of charging for metered service on this basis is incorrect. It is not only confusing to the customer who may not understand what he is paying for, but the accounting department is placed equally at a disadvantage in that it has to separate the revenues represented by each bill every period into arrears and advance charges if the proper record is to be maintained.

[2, 3] The Commission recommends, if the utility does not wish to forego the collections for the advanced period, that all advance charges for a certain period be billed to the customer on separate bills and marked "deposit." Instead of crediting the proceeds from these bills to revenue accounts the credit should be made to a "deposit" account in the general ledger. The deposit should be returned to the customer when service is discontinued provided all bills have been liquidated, or a part thereof retained to satisfy the current bill and the balance returned to the depositor.

Under the procedure of determining charges and collecting accounts in advance it is easily seen that the revenues accruing during one period may be credited to another period and part of the revenues accruing during one fiscal year may be credited to another fiscal year. Under these conditions the income account will not set up a correct statement of earnings of the business during the particular period under consideration and hence cannot be considered as a reliable basis for shaping future policies.

After carefully considering the facts before us we are approving a revised schedule of output charges for general service. It is recommended, however, that the charge for fire protection service be increased in accordance with the apportionment noted if additional revenues are needed by the department. [Order omitted.]

MAINE PUBLIC UTILITIES COMMISSION

Re Milo Water Company

[F. C. 800.]

Valuation — Interest charges.

1. Interest charges, except during construction, cannot properly be added to fixed capital in ascertaining the fair value for rate making, p. 272.

Valuation — Expense of perfecting title.

2. Expenses incurred by a water utility in perfecting title to property additions were held to be more properly included in organization expense than in the capital account, p. 272.

Valuation — Property not used — Water utility.

3. The value of a piece of land purchased by a water utility with the intention of using it for certain utility purposes is not properly included in the capital account for rate making after the company has abandoned such intention, p. 272.

Valuation — Experimental survey — Expense.

4. The cost of experimental surveys and other engineering studies, except in so far as they result in additions and improvements to the property used and useful in the public service, ought not to be allowed in the rate base, p. 273.

Public utilities — Public relations — Avoiding litigation.

5. The Commission urged for the serious consideration of the officials of the water utility and of a town, between which there had existed bad public relations, that some mutual understanding be made so as to eliminate annoying and expensive litigations in the future, p. 275.

Accounting — Rental of mains by water utility.

6. An amount paid to a railroad company by a water utility for the rental of mains was, for the sake of convenience, permitted to be included as an operating expense, although held in fact to be a deduction from income, p. 275.

Return — Operating expense — Amortization of bonds.

7. The interest and amortization charges on utility bonds are deducted from income and must be taken from the return allowed on the rate base rather than included as an operating expense, p. 275.

Depreciation — Amount allowed — Water utility.

8. An allowance of $2,200 was made for annual depreciation of a water utility having a total rate base of $154,400, p. 276.

Return — Percentage allowed — Water utility.

9. An allowance of 6 per cent return on the rate base of a water utility was thought to be as much as the company could reasonably expect to obtain under the particular circumstances existing in the case, p. 276.

[January 27, 1930.]

SUIT *by a water utility for increased rates; rates adjusted in accordance with the opinion and order filed herein.*

APPEARANCES: Ernest L. McLean, for Milo Water Company; Charles E. Gurney for the Inhabitants of the town of Milo; Henry J. Hart, and Frank P. Ayer, for Bangor & Aroostook Railroad Company; C. W. and H. M. Hayes, for American Thread Company.

By the COMMISSION: Complaint of Milo Water Company against itself, dated June 19, 1929, alleging that

its present schedule of rates is insufficient and inadequate and praying that the same may be adjudged unlawful and discriminatory, and that there may be adopted in place thereof such other reasonable rates as the Commission may deem necessary and just in the premises.

After notice of hearing had been ordered on this complaint, the parties in interest requested that the hearing be deferred to enable them, if possible, to adjust their differences. It appearing that the parties had been unable to agree, the Commission ordered that a public hearing be held at the town hall in Milo on October 9, 1929, at 10 o'clock in the forenoon. Notice was ordered and proved to have been given as ordered and hearing was held at Milo on October 9 and 10, 1929. At the conclusion of this hearing, the case was further continued for the purpose of receiving certain additional requested data in the form of exhibits to be furnished by the water company and to enable counsel for the Bangor & Aroostook Railroad Company to present such further evidence as might be deemed necessary. Final hearing was held at the offices of the Commission on November 15, 1929. The exhibits were filed as requested and further evidence was introduced by the water company and also by Bangor & Aroostook Railroad Company. Since the final hearing, briefs have been filed by counsel for the water company and for the town of Milo.

Milo Water Company is a public utility furnshing water for domestic, sanitary, commercial, and municipal purposes in the town of Milo, and is also furnishing sewer service in said town. The existing schedule of rates complained of in this case is designated as M. P. U. C. No. 3, Milo Water Company, issued September 30, 1927, effective October 1, 1927, authorized by decree of this Commission in F. C. No. 641, dated September 30, 1927, as modified by Sheet 2 (First Revision), of said schedule, issued October 30, 1928, effective November 1, 1928, authorized by decree of this Commission in F. C. No. 769, P.U.R.1929B, 330, dated October 26, 1928.

The company claims in this case that its need of increased rates arises from the fact that the revenues anticipated in F. C. No. 641 have not been realized; that certain necessary additions to property have been made since the date of that decree, but especially by reason of the fact that an increased municipal tax has been assessed against the water company by the town of Milo.

The affairs of Milo Water Company have been fully considered by this Commission in F. C. Nos. 641 and 769. We wish, therefore, in this case to give particular consideration to matters which have arisen since these decrees were issued, *viz.*: additions to capital, and the increased operating expenses especially as occasioned by the increase in the municipal tax.

Additions to Capital

The rate base of Milo Water Company (excluding its sewer property) established by the Commission in its decree F. C. No. 641, is $137,500.

The company claims additions to its water fixed capital to July 1, 1929, amounting to $24,516.76, as shown on Page 8 of McLean's brief, as follows:

Milo Water Company

Additions to Water Fixed Capital

MPUC Acct. No.			1926	1927	1928	1929 (6 mos.)
W	10	.....			$250.00	$50.00
W	16	.....		$14.50	2,714.00	
W	17	.....			3,342.69	657.38
W	18	.....			1,326.91	
W	38	.....			1,647.44	
W	53	.....			877.49	952.14
W	57	.....			395.73	
W	85	.....	$117.89	81.61	101.72	71.57
W	89	.....		32.38	500.33	
W	86	.....		62.03	2,722.02	
W	91	.....			4.50	
W	95	.....			355.88	407.98
W	96	.....			15.60	
W	114	.....			910.02	554.50
W	119	.....			22.82	119.06
W	120	.....			6,122.51	15.16
			$117.89	$190.52	$21,510.56	$2,827.79
W	97	Capital retired			130.00	
			$117.89	$190.52	$21,380.56	$2,827.79

[1] This amount includes interest charges. Such charges (except interest during construction) can not properly be added to fixed capital. We have, therefore, eliminated all interest charges from additions to capital allowed in this case. Certain other items are also included in the foregoing tabulation which, for reasons to be presently discussed, can not be allowed to increase the rate base at this time; all other items are allowed as claimed.

[2] *W 10. Organization* The company claims additions in 1928, $250 for expenses incurred in perfecting title to property. While we do not question the amount or the allocation of this item, we believe that this part of the expense of organization must be assumed to have been considered in the item of organization included in the rate base established in F. C. No. 641, and must not, therefore, be added to the rate base in this case. We believe that the item of $50, paid in 1929 in connection with the amendment to the company's charter, is properly allocated to W 10, and should be allowed.

[3] *W 16. Land Devoted to Water Operations* $2,728.50. Addition claimed in 1928, $2,714, is for the purchase price of a piece of land known as "The Island." The evidence indicates that this land was bought for the purpose of locating thereon a pumping station and office building. Since that time, however, the company has changed its plans, repaired and retained its pumping station on the old location, and has purchased a new office building in another location. This piece of land is not presently useful to the public, except, perhaps, as a right of way for a power line and should not, in our opinion, be included in the rate base at this time. This leaves $14.50 to be added to the rate base.

W 17. General Structures $4,000.-07. This amount includes $6.95, interest charge, which should be de-

ducted, leaving $3,993.12 to be added in W. 17.

W 38. Aqueducts, Intakes, and Suction $1,847.44. This amount includes an item of $925.70 paid George R. Hulme for forty-six days' services and expenses and an interest charge of $83.01. No evidence appears in the testimony sufficient, in our opinion, to justify the charge for Mr. Hulme. We have, therefore, eliminated the Hulme charge, except as it may appear in part in the general allowance made in W 120, engineering and superintendence. Deducting also the interest charge of $83.01 leaves $838.73.

W 86. Meters $2,784.05. Deducting interest charges of $137.12 leaves $2,646.93 to be added in W 86.

W 95. General Office Equipment $763.86. Deducting interest charges $3.32 leaves $760.54 to be added in W 95.

W 120. Engineering and Superintendence $8,137.67. No charges for engineering and superintendence, except $60 included in W 17 and $92 included in W 57, have as yet been allowed. The evidence introduced by the company indicates that the total amount paid out for services and expenses incurred in engineering and superintendence (including services and expenses of J. L. Bryne and Bryne & Company) is $7,215.37, allocated as follows:

	1928	1929 to July 1	Total
W 17	$60.00		$60.00
W 38	925.70		925.70
W 57	92.00		92.00
W 120	6,122.51	$15.16	6,137.67
Total			$7,215.37

This amount includes several items of interest which can not be allowed as additions to capital. The amount claimed by the company for engineering and superintendence, according to Mr. Bryne's testimony, covers the entire cost of such services since Mr. Bryne became connected with the company. These figures include: cost of making survey and plan of the company's plant, cost of engineering investigation and study with reference to certain changes and additions to the plant which at one time were contemplated but not in fact made, as well as the cost of the engineering study and investigation relative to the additions and improvements which were made to the plant, and also the cost of superintendence of such additions and improvements.

[4] The rate base already established in F. C. No. 641 includes an item for engineering and superintendence based upon the reproduction of the plant as of June 30, 1928. It must be assumed that all engineering and superintendence charges necessary to reproduce the plant as it then existed, including cost of making survey and plan of the property, were included in the engineers' finding of reproduction cost less depreciation and, therefore, in the rate base already established. Mr. Bryne, the owner of the plant, himself a competent engineer, with the assistance of Mr. Hulme and other engineers, soon after the control of the property was acquired, made a careful study of the physical property and considered several plans of possible future development. The cost of such engineering studies, except in so far as they resulted in additions and im-

provements to property now useful in the public service, ought not to be allowed in the rate base at this time.

The company is entitled to such allowance for engineering study and investigation as was reasonably necessary to ascertain the needs of the community served and to plan and construct additions and improvements to its plant required for such service. The definite amount to be allowed for such engineering services, under the evidence presented, must necessarily be a matter of judgment. We have carefully considered this phase of the question and believe that a charge of $2,500 for engineering and superintendence, to be included in W 120 in addition to the engineering items already specifically allocated in W 17 and W 57, would be fair to the company and not unfair to the consumers.

We have, therefore, additions to capital allowed in this case as follows:

Summary

W 10.	Organization	$50.00
W 16.	Land devoted to water operations	14.50
W 17.	General structures	3,993.12
W 18.	Works and station structures	1,326.91
W 38.	Aqueducts, intakes and suction	838.73
W 53.	Electric power pumping equipment	1,829.63
W 57.	Purification system $1,018.84 less retirement $632.11	386.73
W 59.	Distribution mains	532.71
W 85.	Services	372.79
W 86.	Meters	3,646.93
W 91.	Customers' installations	4.50
W 95.	General office equipment	760.54
W 96.	Hydrants and fire cisterns	15.50
W 114.	Stable and garage equipment	1,464.52
W 119.	Other equipment	141.88
W 120.	Engineering and superintendence	2,500.00
	Total	$16,888.99

These additions added to the rate base of $137,500, amount to $154,389.99, say $154,400, which we establish as the rate base of the water division of Milo Water Company on which the company is entitled to receive a fair return provided such return can be obtained at rates which are fair and reasonable to the consumers as well as to the company. Included in this rate base, however, is the Park street extension, which was specifically considered in our decree in F. C. No. 641 and for which a minimum charge to be paid by the consumers on that line was provided.

Park street extension has been carried in the fixed capital of the company at its original cost of construction, $8,222.39, with an offsetting liability due the American Thread Company on the contract of purchase.

The complete title to this line has recently been acquired by the company so that the fixed capital account will be adjusted by deducting the present debit item and inserting the actual cost to the company at the time of the purchase. The offsetting liability will be canceled. This adjustment will decrease the fixed capital and proportionately decrease the rate base found in F. C. No. 641. Present consumers must not be subjected to any additional burden by reason of the Park street extension and for this reason the minimum charge established for this line in F. C. No. 641 has been eliminated. No evidence has been offered on which a proper adjustment of the rate base as regards this line can be made at this time. Additions to property made since July 1, 1929, are not included in the rate base herein established so that when the necessary adjustments (including Park street ex-

tension and additions since July 1st) shall have been made neither the company nor the water-takers will be unduly prejudiced.

Public Relations

[5] The public relations existing between the water company and the town of Milo for the past several years have been bad. This results in much unnecessary annoyance, litigation, and expense to all of the parties concerned, as well as numerous investigations and hearings, otherwise unnecessary, on the part of this Commission. We urge for the serious consideration of the officials of the company and of the town that some mutual understanding and agreement be made between them so that such annoying and expensive proceedings may be avoided in the future.

Operating Expenses

The company's actual operating expenses for the first six months of 1929, as shown by company's exhibit No. 1, is $9,792.77. The estimated revenue for the year 1929, obtained by doubling this amount, is $19,585.54.

After a careful study of all the evidence and exhibits presented as well as briefs of counsel filed in the case, we have determined what we believe to be the reasonable and necessary operating expenses required by the company. In arriving at this determination consideration has been given to the experience of the past as well as the probable requirements for a reasonable time in the future.

[6, 7] The items of operating expenses claimed by the company, as shown in company's exhibit No. 1, to which we take exception, will be briefly discussed and the remaining items will be allowed as claimed by the company.

The amount paid Bangor & Aroostook Railroad Company for rental of mains, $300, is, strictly speaking, a deduction from income and not an operating expense. Inasmuch, however, as the amount of this rental must be included in the revenue requirement, we shall, as a matter of convenience, include it in the operating expense. The interest and amortization charges on the bonds are deductions from income and must be taken from the return allowed on the rate base. The amount paid American Thread Company for rent of main (more strictly speaking, on account of contract) will not recur and has, therefore, been eliminated.

A salary of $1,000 per year for the president of this company is not unreasonable but we believe that the treasurer's salary should not exceed $300 per year. We have added $100 for the annual expenses of these officers.

Exhibit No. 1 shows an actual expenditure of $1,100.77 for general law expenses from January 1 to June 30, 1929. It is not expected that so large an amount for this item will be necessary over a period of years. A large part of this expense has been occasioned by the controversies resulting from improper public relations and can not be recurrent if the company is to continue to function. We have allowed for this item $300 which be believe to be a reasonable annual charge.

The exhibit gives no information in regard to maintenance of general

office structures but the evidence indicates and we have allowed $100 as a reasonable amount for this item.

Depreciation

[8, 9] An allowance of $2,000 for depreciation was made in F. C. No. 641. The company claims that a much larger amount is required for depreciation and, in the year 1928, charged to this account $4,283.94. We do not feel justified in increasing the depreciation charge at this time, except as it is affected by additions to property. An allowance of $2,200 for depreciation will be allowed and included in the operating expense.

Taxes

The town of Milo assessed against the water division of Milo Water Company, for the year 1929, a municipal tax of $4,790.50, an increase over the previous year of $952.57. This becomes a part of the operating expense and must be paid by the ratepayers, thereby resulting in a further increase in rates. The burden of the municipal tax assessment for 1928 was provided for by an increase in hydrant rental. Some of the present increases, however, must necessarily be placed upon the domestic consumers as well and will be reflected in the increases ordered in this decree. An item of $4,800 is included for taxes in the operating expense of the company and practically all of this amount is the direct result of the municipal tax assessment.

The foregoing items which we have discussed, exclusive of depreciation and taxes, as allowed amount to	$1,800.00
Bangor & Aroostook Railroad Company, rental of mains (deduction from income)	300.00
Items allowed as claimed by the company amount to	6,226.34
Depreciation	2,200.00
Taxes	4,800.00
Total operating expenses	$15,326.34

We believe that a 6 per cent return on the rate base found herein is as much as the company can reasonably expect to obtain under the circumstances existing in this case and that such return will not be unfair to the consumers if it can be obtained at reasonable rates. A 6 per cent return on the rate base ($154,400) is $9,264. This figure added to the operating expenses (including rental of mains) results in a total revenue requirement of $24,590.34.

The company's actual water operating revenue for the first six months of the year 1929, as shown in company's exhibit No. 1, is $11,452.29. The estimated revenue for the year 1929, obtained by doubling this amount, is $22,904.58.

The testimony shows that the company will recoup a part of its operating expenses (or, in other words, increase its revenue) by means of payments received from Brownville and Williamsburg Water Company for office rent, labor of employees, use of equipment, etc., but the amount that will be so received is not definitely determined. It is evident that such receipts should be a substantial amount because a part of the equipment, notably the trucks, is ample for the use of both companies and Mr. Bryne estimates that one-third of the office

rent should be paid by the Brownville company.

The sewer division of the water company should also pay a proportionate share of the salaries and expenses of general officers and other overhead expenses which can not be allocated directly to that division. We are of the opinion, from study of all the evidence presented in the case and the public records at our disposal, that Milo Water Company will receive from the Brownville company and the sewer division of the water company at least $700 per year in payment for their share of these services and expenses. This amount added to the 1929 revenue, $22,904.58, as stated above, results in a total revenue of $23,604.58.

The revenue requirements as stated above are	$24,590.34
Deducting the probable revenue	23,604.58
Leaves a balance of	$985.76

Additional revenue required to be obtained through increased rates.

We have increased the quarter yearly minimum charge from $4.50 to $4.75, resulting in increased revenue of	$564.00
We have increased the hydrant rental for first 48 hydrants from $140 to $150 per year, resulting in increased revenue of	480.00
or a total increased revenue of	$1,044.00

It is, therefore,

Ordered, adjudged, and decreed

1. That the present rates of Milo Water Company, as indicated in paragraphs Nos. 2 and 3 of this order, are unreasonable and inadequate and, therefore, unlawful.

2. That Milo Water Company amend sheet No. 1 (original) of its rate schedule M. P. U. C. No. 3, by eliminating the "minimum yearly charge for Park street extension," and by substituting for the quarter yearly minimum charge of $4.50 for the first 4,000 gallons the minimum quarter yearly charge of $4.75 so that said sheet as amended shall read as follows:

Rates for Services

Minimum Charge

The quarter yearly charge shall be:—	
For the first 4,000 gallons	$4.75
	Per M gallons
Next 6,000 gallons per quarter	.75
" 10,000 " " "	.55
" 20,000 " " "	.40
Excess " " "	.09

3. That Milo Water Company establish in lieu of the municipal annual hydrant rates, as provided in sheet 2 (first revision) of its rate schedule M. P. U. C. No. 3, the following:

Municipal Services

	Annual Rates
For the first 48 hydrants, each hydrant	$150.00
Each additional hydrant	60.00

4. That Milo Water Company be, and it hereby is, required and authorized to file on not less than one day's notice the necessary amendments to its schedule, effective February 1, 1930, to comply with the provisions of this order.

INDIANA PUBLIC SERVICE COMMISSION

Re Indiana Service Corporation

[Nos. 8828, 8829, 9886.]

Rates — Tariff — Coal clause.

The Commission eliminated from the filed tariff of an electrical utility a coal clause which would automatically increase or decrease with fluctuations in the price of coal, in view of the superior jurisdiction and duty of the Commission to adjust utility rates at all times.

[SINGLETON, Commissioner, dissents.]

[January 24, 1930.]

PETITION of an electrical utility for authority to establish new rates; new rate schedule granted with modifications.

APPEARANCES: James M. Barrett, Jr., Henry Bucher, William S. Richhart, and James S. Clark, for petitioner; None, for protestants.

By the COMMISSION: By joint petition filed with the Commission on January 22, 1927, the Indiana Service Corporation and the town of Geneva asked for approval of a schedule of electric rates agreed upon for electric service at Geneva, which petition is handled under Cause No. 8828.

By joint petition filed with the Commission on January 22, 1927, by the Indiana Service Corporation and the town of Berne, Indiana, approval is asked of a new set of rates for Berne, Indiana, and is handled under our Cause No. 8829.

On August 21, 1929, the Indiana Service Corporation filed with the Commission its petition for approval of schedules of electric rates applying at all of the points served by it as set forth in Exhibits No. 1 and 2 attached to the petition.

After due and legal notice these causes came on for hearing at the Chamber of Commerce rooms, Fort Wayne, Indiana, November 13, 1929, at 10 o'clock A. M. At this hearing no protestants appeared.

Petitioner, the Indiana Service Corporation, in Dockets Nos. 8828 and 8829, offered evidence to the effect that these rates have been charged by petitioner since January 1, 1927. The rates set forth in these petitions were the result of a number of conferences between the consumers and the petitioner at Berne and Geneva, Indiana. It appeared from the Commission's record that inasmuch as there was a change in the basis of rates from a straight energy rate to a two part service charge and energy rate, that each of the causes was docketed for hearing. The Commission's record further shows that until the hearing

in the present case, no hearings had been held on these causes.

The testimony of the petitioner was to the effect that the energy rates both for residential lighting and power were reductions, but that the minimum was increased from 50 cents to $1.

The petitioner having charged these rates for the last three years and inasmuch as no protestants appeared in this hearing, and further, that the proposed rates were the result of an agreement between the petitioner and consumers, it would appear that these schedules should be approved.

With reference to Cause No. 9886, the petitioner at the time of this hearing had in effect the rate known as their "A-2" rate which was an optional residential service rate applicable at all the cities and towns where the petitioner operates in Indiana. This rate provided for a service charge of $2 per month plus an energy charge of the first 200 kilowatt hours at 3 cents, balance at 2 cents, monthly minimum charge of $7.50 per month, and it was applicable to residential consumers who had connected electric range and water heater in addition to electric lighting. It appears from the evidence that there are no customers now taking service on this rate, except, in the city of Fort Wayne, and permission is sought to cancel it for the outside territory.

At the time of hearing petitioner also had in effect rate "E," domestic house heating rate applicable at all points in the territory served by it. The evidence shows that there were no consumers using this service outside the city of Fort Wayne and permission is sought to cancel the rate as an obsolete rate, except for Fort Wayne.

Petitioner also offered exhibit No. 4 which is a new schedule of rates for the city of Fort Wayne suburban and rural territory. The schedule now on file for the city of Fort Wayne does not clearly define the boundary between the suburban and rural territory. By exhibit No. 4 the city of Fort Wayne rates comprise an area of 8 miles square and the boundaries are definitely set forth in the schedule. The suburban rate is defined as all of the area comprising a 14-mile square excluding the territory shown in the 8-mile square block. Beyond the 14-mile square the rural rate applies until it is met by the rural rate from the other near-by cities and towns. The suburban rate as proposed in exhibit No. 4 is the same rate as has been charged heretofore to several towns located in the vicinity of Fort Wayne but not heretofore carried in the Fort Wayne schedule.

The evidence also shows that sometime prior to May 25, 1925, the Northern Indiana Power Company served Clymers, Indiana; that on or about May 25, 1925, this property was acquired by a lease by the Indiana Service Corporation and that at that time it put into effect the same schedule of rates at Clymers that was in effect at their other near by properties. Through error, however, the Indiana Service Corporation did not file adoption notices with the Commission taking over the rates on file for this point, filed by the Northern Indiana Power Company.

The rates charged by the Indiana Service Corporation since acquiring this property are practically the same

as the rates as were filed by the Northern Indiana Power Company, with the exception that the minimum rate to rural customers was $2.50 under the Northern Indiana Power Company schedule, while the rates of the Indiana Service Corporation which have been charged since that time provide for a minimum of $3 per month for rural customers, except that where five or more are served from the same transformer, the minimum is $1 per month. Petitioner asks that it now be allowed to put into effect the schedule which it has been charging for some three or four years at this point.

Evidence was also given to the effect that this Commission in Cause No. 7650 permitted the Indiana Service Corporation to acquire the property of the Fort Wayne & Northwestern Railway Company, hereinafter called the Fort Wayne Company, on August 1, 1924. The Fort Wayne Company had filed with this Commission schedules of rates applying at Auburn, Garrett, Avilla, Huntertown, and Allen, Dekalb, and Noble counties. It was necessary for the patrons to pay meter rental and to buy all transformers used on this service, the service being available only during the hours that the traction cars operated. After acquiring the property, the Indiana Service Corporation bought from the patrons the transformers, equipment, etc., and eliminated the meter rental, putting into effect at these points the rates which the Indiana Service Corporation had been charging to its other rural customers. The schedules as filed for Auburn, Garrett, and Avilla were misleading as the Fort Wayne Company did not operate in these cities and towns, but only operated in the rural territory outside of them.

Investigation develops the fact that no adoption notices had ever been filed by the Indiana Service Corporation taking over the rates, rules, and regulations of the Fort Wayne Company and that the rates which had been charged by the Indiana Service Corporation since the acquiring of this property have never been formally approved by the Commission. Petitioner asks that the rates which they have been charging at these various cities and towns since acquiring the property of the Fort Wayne Company now be approved.

Each of the large power schedules applying at cities and towns in the Marion-Bluffton district and the Fort Wayne district provide or carry a coal clause to the effect that when the price of coal varies more than 15 per cent above or below $3.40 per ton, that the power rate shall be increased or decreased eight and one-half one hundredths of a mill per killowatt hour.

Considerable testimony was offered by petitioner to the effect that these power rates are made as low as can be done consistently in order to give consumer the benefit of the lowest possible rate; that the greatest cost in producing this current is coal, and the fluctuation of the coal prices will greatly affect the cost of the current.

The Commission is asked to give approval to the coal clause now contained in the tariffs on file with the Commission and also to the coal clauses in the tariffs to be filed, if the Indiana Service Corporation's petitions in these causes are granted.

While it is quite likely that the power rates on large quantities as shown in the tariffs are more or less related to the coal consumption, it would appear that the Commission is without power to confer authority for increasing rates contingent upon some future happening, and that it would be necessary for the Commission to determine whether or not the price of coal had increased or decreased. Therefore, it makes little or no difference whether the coal clauses are placed in the tariff or not, for the reason that it would be necessary for the Commission, either on petition of the consumer or the utility, to ascertain the prevailing price of coal before allowing an increase or reduction in rates, on the theory that no increase in rates can be allowed without a public hearing.

After due consideration of the evidence in the above causes, the Commission is of the opinion and makes the following findings:

(1) That the schedules as have been applied at Berne, Geneva, and Van Buren for the last several years should be approved;

(2) That the petitioner should be allowed to cancel the domestic house heating electric rate "E" as shown in exhibit No. 2 from all of its tariffs with the exception of Fort Wayne, Indiana;

(3) That petitioner should be allowed to cancel optional residential service rate No. "A"-2 as shown in petitioner's exhibit No. 3 from all of its tariffs except Fort Wayne;

(4) That the new schedule of rates applicable for Fort Wayne, Indiana, known as P. S. C. I. "E-1" New Series, which is petitioner's exhibit No. 4, be and the same is approved;

(5) That the petitioner be allowed to cancel the rates now on file with the Commission in the name of the Fort Wayne and Northwestern Railway Company and that in lieu thereof it be permitted to establish, file, and collect for Swan, LaOtto, Huntertown, Garrett rural and Avilla rural, the rates as set forth in petitioner's exhibits Nos. 5 to 9 inclusive;

(6) That the petitioner be allowed to put in effect at Clymers, Indiana, the rate as set forth in petitioner's exhibit No. 10;

(7) That the Commission has no power to approve an increase or decrease in rates contingent upon some future happening, and that there can be no increase or decrease in any rates, rules, or regulations without the approval of the Commission, as shown in § 45 of the Shively-Spencer Act, and that the coal clause should be eliminated from the schedule of rates.

It is therefore *ordered* by the Public Service Commission of Indiana, that the findings, numbers 1 to 7 inclusive, as set forth above, be and they are hereby approved and ordered into effect as of January 1, 1930.

It is further *ordered,* that petitioner, the Indiana Service Corporation, pay to the treasurer of state, through the secretary of this Commission, the sum of $9.50, expense incurred in legal publication of notice of hearing herein.

West and Ellis, Commissioners, and McCardle, Chairman, concur; Singleton, Commissioner, dissents; McIntosh, Commissioner, absent.

MISSOURI PUBLIC SERVICE COMMISSION

Re Liberal Light & Power Company et al.

[Case No. 6696.]

Consolidation, merger, and sale — Mergers not involving public interest.

The Commission approved an application for the transfer of power properties where there was nothing to indicate that the public would either be benefited, or, on the other hand, put to any disadvantage by the authorization sought.

[January 23, 1930.]

APPLICATION *of an electric company to sell its properties to another electric company; granted.*

By the COMMISSION: This case is before the Commission upon the joint application of the Ozark Utilities Company of Kansas City, Missouri, hereinafter referred to as the purchaser, to purchase, and the Liberal Light & Power Company of Liberal, Missouri, hereinafter referred to as the seller, to sell the electric distribution systems in the towns of Liberal, Bronaugh, and Moundville, together with the transmission lines between said towns and all other electric utility property now owned and operated by the seller in Barton and Vernon counties, Missouri, and for a certificate of convenience and necessity authorizing the purchaser to own and operate said property.

The application is accompanied by a resolution of the stockholders of the Liberal Light & Power Company, the seller herein, authorizing the directors and officers to sell the aforesaid electric property to the Ozark Utilities Company for the price and consideration of $76,000.

There is also filed with the application a statement setting forth the balance sheet of the seller as of April 30, 1929. This statement shows that the assets of the seller is $47,060.96.

The application is accompanied by a letter signed by the town officers of the towns of Liberal, Bronaugh, and Moundville, stating that the said officers have no objections to the transfer proposed herein.

Filed with the application is an appraisal made by Spooner & Merrill, consulting engineers of Chicago, which appraisal finds a reproduction cost new value, less depreciation, of $78,997. This appraisal also states that for the year 1928 the net income before depreciation and interest charges amount to $5,052.83.

The annual report made to the Commission by the seller for the year 1928 shows assets of $36,798.10, with a cost of plant value amounting to $32,565.83.

It is very evident with the information filed with the application that the

seller has not kept its books sufficiently accurate to show the investment used in serving the public or that the appraised value is too large. In the absence of any other information than that now before it, the Commission will not attempt to determine what the value of the property is. The net return for interest and depreciation of $5,052.83 is, of course, a small amount for return and depreciation on $76,000 worth of electric property used in serving the public.

The seller is now purchasing current wholesale from the Kansas Gas & Electric Company and does not own an electric generating plant but from the records of the Commission it appears that the source of electric supply for the use of the seller has been adequate.

There is nothing in the application to indicate that the public will be benefited by the proposed transfer but on the other hand it does not appear that the public will be put to any disadvantage by authorizing the purchaser to take over the property and operate it.

It is, therefore,

Ordered: 1. That the Commission consents to the transfer by the Liberal Light & Power Company of the electric distribution systems in the towns of Liberal, Bronaugh, and Moundville and the electric transmission lines connecting said distribution systems and all other electric property now owned and operated by the seller for the sum of $76,000 in cash. Said purchaser is hereby granted a certificate of convenience and necessity for the ownership and operation of said distribution systems and transmission lines.

Ordered: 2. That nothing herein shall be construed as a finding by the Commission that the service of said parties is adequate, efficient, or sufficient.

Ordered: 3. That nothing herein shall be considered as a finding by the Commission of the value for rate-making purposes of the property herein sought to be sold or transferred, either as to the whole or any part thereof, nor as an acquiescence in the value placed upon said property by said parties, nor as an approval of the consideration passing therefor.

Ordered: 4. That the purchaser shall file subject to the approval of the Commission, a schedule of rates, rules, and regulations for electric service furnished at Liberal, Bronaugh, and Moundville, Missouri.

Ordered: 5. That this order shall take effect ten days after the date hereof, and that the secretary of the Commission shall forthwith serve on all parties interested herein, a certified copy of this report and order, and that the applicants and all other interested parties shall notify the Commission on or before the effective date of this report and order, in the manner prescribed by § 25 of the Public Service Commission Law, whether the terms of this order are accepted and will be obeyed.

Ing, Acting Chairman, Hutchison, Porter, and Hull, Commissioners, concur; Stahl, Chairman, absent.

MISSOURI PUBLIC SERVICE COMMISSION

Re Midwest Telephone Company

[Case No. 6413.]

Valuation — Investment cost as a basis — Telephones.

1. The Commission refused to accept investment cost as the fair value of telephone property for rate-making purposes in view of the prevalent practice within the state of purchasing such plants at figures greatly in excess of their value, p. 287.

Valuation — Ascertainment for rate-making purposes — Telephones.

2. The Commission refused to accept either the reproduction cost new less depreciation or the investment cost as the sole basis of value of telephone property for rate-making purposes, but instead used an appraisal based upon the Commission's engineers' estimate of telephone exchange values, p. 287.

Valuation — Going value — Telephone utility.

3. An estimated going concern value based upon 10 per cent of the reproduction cost new of a telephone utility's property was deemed to be excessive in a rate proceeding, p. 287.

Service — Telephones — Switching and multi-party lines.

4. The Commission was of the opinion that the number of telephones per line for switching service should be four instead of five as requested by a utility, and that the maximum number of eight telephones per line should be provided for rural multi-party line service, p. 288.

[January 15, 1930.]

APPLICATION *of a telephone utility for increased rates; granted.*

ING, Commissioner: This case comes to the Commission upon the application of the Midwest Telephone Company for certain changes in rates for telephone service at its exchanges at Otterville, Fortuna, Bunceton, Clarksburg, Smithton, and Syracuse, Missouri, most of said changes being for increases.

At its Otterville exchange, the applicant proposed the following changes:

City individual business telephones, now $1.25 per month	$2.50 per month
City individual residence telephones, now $1.25 per month	1.50 " "
All city party-line service to be discontinued.	
Rural multi-party business service, no rate now filed	2.00 " "
Rural multi-party residence service, now $1.00 and $1.25 per month	1.50 " "
Extension business sets, no rate now on file	1.00 " "
Extension residence sets, now 75¢ per month	.50 " "
Desk sets, no rate now on file	.25 " "

Switching service stations, now 60¢, 50¢, 42¢, 40¢ and 35¢ per month	.50 " "
Extension bells or gongs, no rate now on file	.25 " "
Joint users of business telephones, no rate now on file	1.00 " "
Joint users of residence telephones, no rate now on file	.50 " "
Mileage per quarter mile or fraction thereof beyond city limits, no rate now on file	.25 per mile
Switching service is limited to a minimum of five telephones on a line, and no maximum number fixed.	

The proposed changes in rates at Fortuna are as follows:

City individual business telephones, now $1.50 per month	$2.50 per month
City individual residence telephones, now $1.00 per month	1.50 " "
Rural multi-party business service, no rate now on file	2.00 " "
Rural multi-party residence service, now $1.00 per month	1.50 " "
Extension business sets, no rate now on file	1.00 " "
Extension residence sets, no rate now on file	.50 " "
Switching service, now 50¢ and 75¢ per month	.50 " "
Extension bells or gongs, no rate now on file	.25 " "
Joint users business telephones, no rate now on file	1.00 " "
Joint users residence telephones, no rate now on file	.50 " "
Mileage per quarter mile or fraction thereof beyond city limits, no rate now on file	.25 per mile
Switching service to have a minimum of five telephones on a line, no maximum number being fixed.	

The changes in rates proposed at the Syracuse exchange are as follows:

City individual business telephones, now $1.25 and $1.40 per month	$2.50 per month
All city party-line business service to be discontinued.	
City individual residence telephones, now $1.25 per month	1.50 " "
All city party-line residence service to be discontinued.	
Rural multi-party business service, no rate now on file	2.00 " "
Rural multi-party residence service, now $1.25 per month	1.50 " "
Extension residence sets, no rate now on file	.50 " "
Desk sets, no rate now on file	.25 " "
Switching service, now 25¢, 35¢, 40¢, and 50¢ per month	.50 " "
Joint users business service, no rate now on file	1.00 " "
Joint users residence service, no rate now on file	.50 " "
Extension bells or gongs, no rate now on file	.25 " "
Mileage per quarter mile or fraction thereof beyond city limits, no rate now on file	.25 per mile
Switching service to have a minimum of five telephones on a line. No maximum being fixed.	

The changes proposed at the Smithton exchange are as follows:

City individual business telephones, now $1.15 and $1.25 per month	$2.50 per month
City party-line business telephone service to be discontinued.	
City individual residence telephones, now $1.25 per month	1.50 " "
All city party-line residence service to be discontinued.	
Rural multi-party business telephones, now $1.10 per month	2.00 " "
Rural multi-party residence telephones, now $1.00 and $1.25 per month	1.50 " "
Extension business sets, now 75¢ per month	1.00 " "
Extension residence sets, no rate now on file	.50 " "
Switching service, now 35¢ and 50¢ per month	.50 " "
Extension bells or gongs, no rate now on file	.25 " "
Joint users business telephones, no rate now on file	1.00 " "
Joint users residence telephones, no rate now on file	.50 " "
Mileage per quarter mile or fraction thereof beyond city limits, no rate now on file	.25 per mile

Switching service to have a minimum of five telephones on a line. No maximum number being fixed.	
Desk sets, no rate now on file	.25 per month

The changes proposed at the Clarksburg exchange are as follows:

City individual business telephones, now $1.25 per month	$2.50 per month
City individual residence telephones, now $1.00 per month	1.50 " "
Rural multi-party business service, no rate now on file	2.00 " "
Rural multi-party residence service, no rate now on file	1.50 " "
Extension business sets, no rate now on file	.50 " "
Switching service, now 50¢, 75¢ and $1.00 per month	.50 " "
Extension bells or gongs, no rate now on file	.25 " "
Joint users of residence service, no rate now on file	.50 " "
Joint users of business service, no rate now on file	1.00 " "
Mileage per quarter mile or fraction thereof beyond city limits, no rate now on file	.25 per mile
Switching service to have a minimum of five telephones on a line. No maximum for such service being fixed.	

The proposed changes in rates at the Bunceton exchange are as follows:

City individual business telephones, now $2.00 per month	$2.50 per month
All city party-line business telephones to be discontinued.	
Individual residence telephones, now $1.35 and $1.75 per month	1.50 " "
All city party-line residence telephone service to be discontinued.	
Rural multi-party business telephones, no rate now on file	2.00 " "
Rural multi-party residence telephone service, now $1.00, $1.15, $1.25, $1.30 and $1.35	1.50 " "
Extension residence sets, no rate now on file	.50 " "
Switching service, now 50¢, 75¢, and 85¢ per month	.50 " "
Extension bells or gongs, no rate on file	.25 " "
Joint users business service, no rate now on file	1.00 " "
Joint users residence service, no rate now on file	.50 " "
Mileage per quarter mile or fraction thereof beyond the city limits, no rate now on file	.25 per mile
Switching service to have a minimum of five telephones per line, no maximum for such service being fixed.	

The Commission received a communication from the chairman of the board of trustees of the village of Otterville stating that at a meeting of the patrons of the Midwest Telephone Company, they were unanimously opposed to the proposed increase of rates.

A letter received from the mayor of Smithton, Missouri, advised the Commission that all comments he had heard with reference to the proposed increase in rates had been in the nature of objections.

A letter received from the mayor of Clarksburg, Missouri, stated to the Commission that there is a general objection to the proposed raise of telephone rates.

A petition of fifty-five citizens of Fortuna was filed with the Commission protesting the proposed increase in rates.

A letter received from the city clerk and mayor of Syracuse, Missouri, protested against the proposed rates.

A letter from the mayor of Bunceton and the president of the Bunceton chamber of commerce stated that while there are some subscribers who object to any change in telephone rates, they think the greater part of the telephone patrons would not ob-

ject to the increase asked, provided the company should be required to make improvements before the rate changes become effective.

This case was heard by the Commission at its offices in Jefferson City, Missouri, on September 3, 1929, at which hearing the applicant was represented by its counsel, A. Z. Patterson and G. C. Chestain, no one appearing to protest the application.

[1–3] The applicant offered three methods of determining the valuation of its property at the various exchanges. One, an appraisal made by the company's engineers, another, an estimate by the company's engineers on the basis of appraisals made by the Commission's engineers on the property of other exchanges of similar size, and third, by a consideration of the actual cash investment. It was the contention of the applicant that either basis would show that the increase asked should be granted in order that the applicant might make a fair return on the value of the property. The Commission cannot accept the investment basis. At great many telephone exchanges have been bought in this state within the last few years at figures greatly in excess of their value, and the Commission does not regard the investment in the plant as proof of present fair value and, therefore, the proper base upon which rates should be established. Neither does the Commission accept reproduction cost new less depreciation as the sole basis of valuation, but is inclined to believe that in this case the second basis submitted, an estimate based upon the Commission's engineers' appraisal of other telephone exchanges, is the most reliable of the three estimates submitted. Going concern value based upon 10 per cent of the reproduction cost new was included in the company's estimate, which the Commission believes is greater than should be allowed for these properties.

Using basis No. 2, the estimate submitted by the applicant based upon findings of the Commission's engineers in its appraisals of other telephone exchanges, together with the going value which the Commission believes proper to allow, the approximate valuation of the six exchanges would be as follows:

Bunceton—	
Reproduction new less depreciation	$27,373.00
Going value	1,500.00
Total approximate value	28,873.00
Approximate value per owned station, considering ten switched stations the equivalent of one owned station	77.20
Clarksburg—	
Reproduction new less depreciation	$6,844.00
Going value	400.00
Total approximate value	7,244.00
Approximate value per owned station, considering ten switched stations the equivalent of one owned station	68.30
Fortuna—	
Reproduction new less depreciation	$4,681.00
Going value	250.00
Approximate value	4,931.00
Approximate value per owned station, considering ten switched stations the equivalent of one owned station	74.70
Otterville—	
Reproduction new less depreciation	$17,251.00
Going value	1,000.00
Approximate value	18,251.00
Approximate value per owned station exclusive of real estate, considering ten switched stations the equivalent of one owned station	67.40

Smithton—	
Reproduction new less depreciation	$6,741.00
Going value	350.00
Approximate value	7,091.00
Approximate value per owned station, considering ten switched stations the equivalent of one owned station	53.30
Syracuse—	
Reproduction new less depreciation	$6,442.00
Going value	400.00
Approximate value	6,842.00
Approximate value per owned station exclusive of real estate, considering ten switched stations the equivalent of one owned station	84.60

The net revenue available for depreciation and return, if the proposed rates be granted, accepting the figures of the applicant as to its revenues and expenses, if the business of the applicant remains normal, will be as follows:

Bunceton	$3,173.38
Clarksburg	284.69
Fortuna	238.81
Otterville	1,322.70
Smithton	913.31
Syracuse	162.04

The percentages for depreciation and return based upon the approximate valuation hereinbefore shown, will, if the proposed rates be granted, be as follows:

Bunceton	11 per cent
Clarksburg	3.9 " "
Fortuna	4.8 " "
Otterville	7.2 " "
Smithton	12.9 " "
Syracuse	2.4 " "

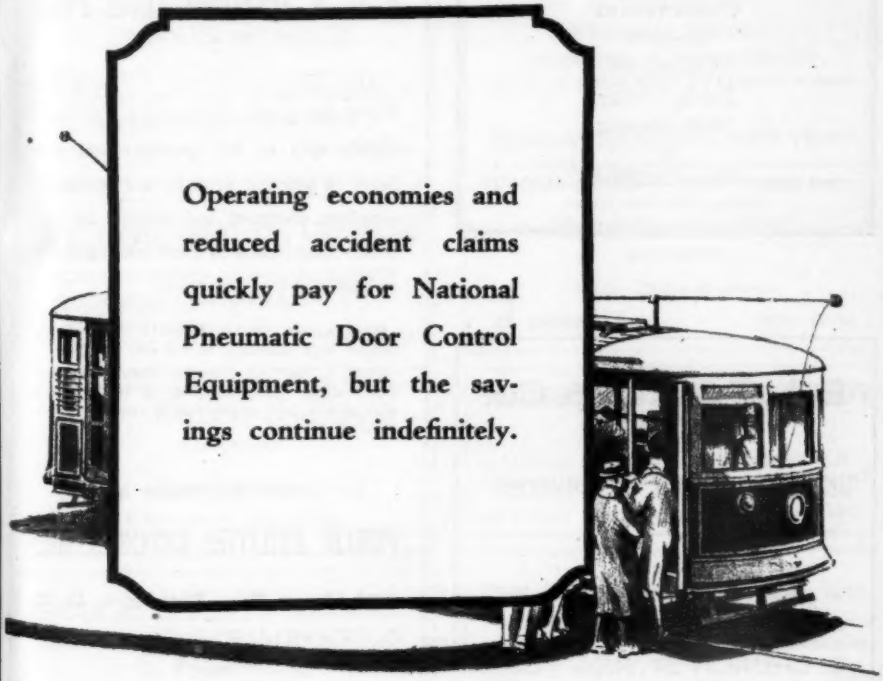
The applicant has 118 owned stations at Smithton, 62 at Syracuse, 57 at Fortuna, 238 at Otterville, 88 at Clarksburg, and 373 at Bunceton.

The applicant has done considerable work in rehabilitating the several telephone exchanges. At Fortuna, the testimony shows the applicant has practically rebuilt the lines, put in new poles, new wire, and removed the office location. From $100 to $600 has been spent on each exchange. With the improvements recently made, the Commission will expect the service to be adequate and satisfactory. A failure on the part of the applicant to do so, if reported to the Commission, will be promptly investigated by the Commission for the purpose of determining whether the service rendered is commensurate with the rate charged. The applicant is entitled to a fair return upon the fair value of its property, used and useful in the public service, but at the same time it is required to render to its patrons adequate, sufficient, and satisfactory service. The Commission has made no allowance for cash working capital for the reason that such allowance would make no material difference in the results found.

[4] It appears that the proposed rates are not excessive, and same will be allowed with the exception of the proposed charge of 25 cents for desk sets. The Commission is of the opinion that the minimum number of telephones per line for switching service should be four instead of five as requested by the applicant, and that a maximum number of eight telephones per line should be provided for rural multi-party line service.

An order authorizing the rates asked at the several exchanges will, therefore, be granted.

Hutchison, Porter, Hull, Commissioners, concur; Stahl, Chairman, absent.



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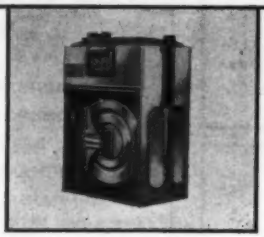

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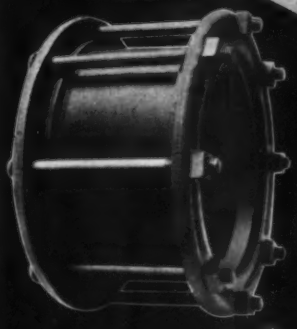

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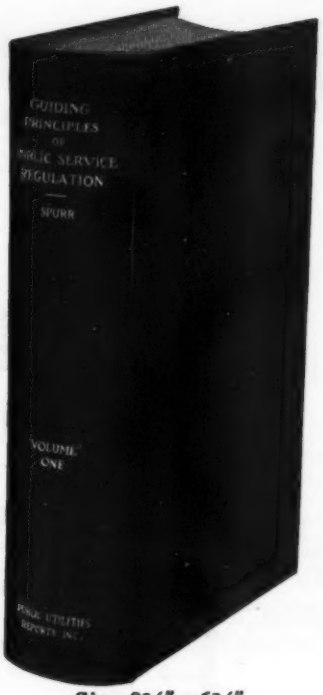

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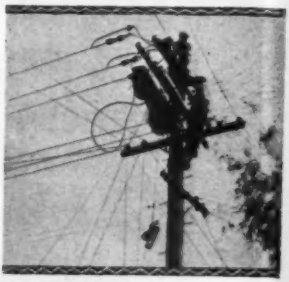

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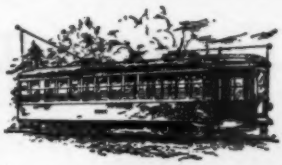

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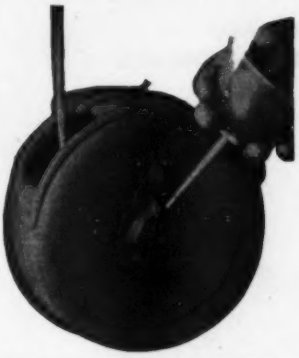

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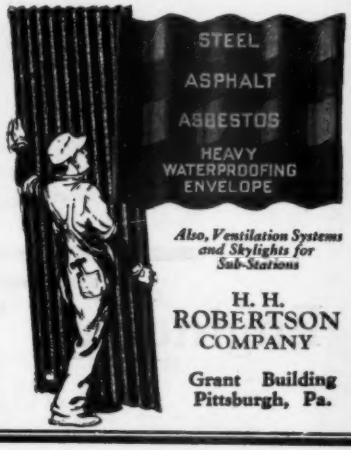

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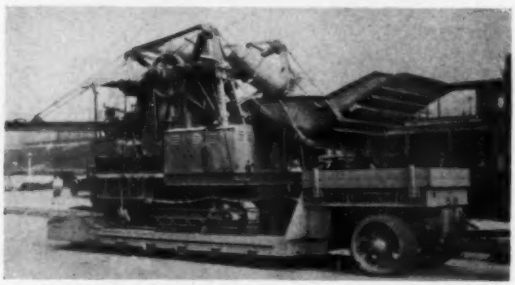

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